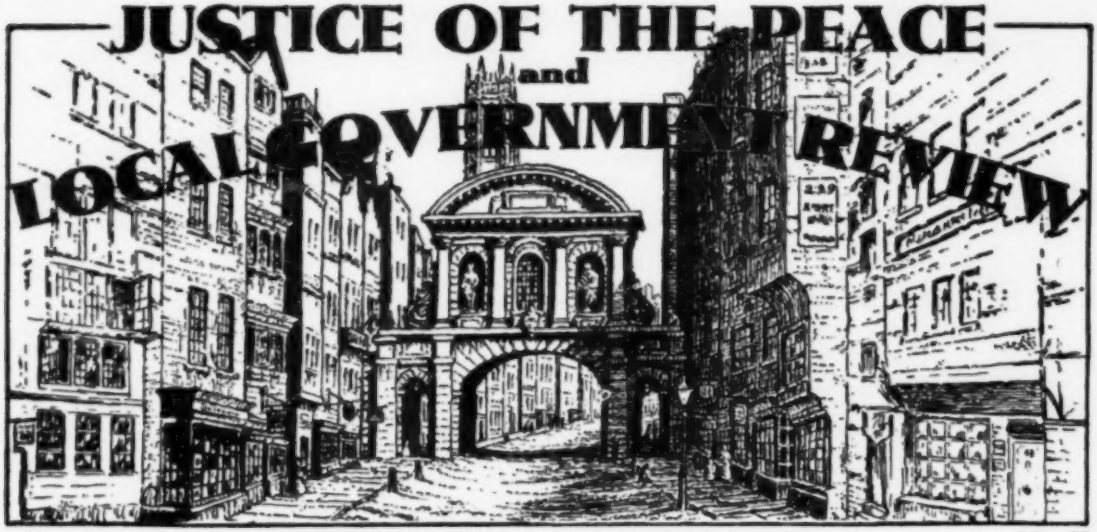

VOL. CXV. LONDON: SATURDAY, DECEMBER 29, 1951. No. 52

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The appointment will be subject to three months' notice, on either side, and to the provisions of the Local Government Superannuation Act, 1937.

Applications, giving full particulars of age, experience, previous local government service and the date upon which the applicant could commence duties, with the names of two persons as referees, must be received by the undersigned not later than Monday, January 21, 1952.

H. A. JONES,
Clerk to the Council.

Council Offices,
Coleford, Glos.
December 14, 1951.

appointed by any lawful authority as a standing whereon hackney carriages may ply for hire, but there is a place so appointed some fifty yards from where the appellant was stationary with his cab, *viz.*, at the side of the station in Chase Road, Southgate. The justices were of opinion that the offence charged had been committed, and they ordered the appellant to pay a small fine.

In my opinion, the justices did not come to a right decision in point of law. The London Hackney Carriage Act, 1831, s. 35, provides:

> " . . . Every hackney carriage which shall be found standing in any street or place . . . shall, unless actually hired, be deemed to be plying for hire . . . "

and it imposes by other words in the section an obligation on the driver to accept a fare. The marginal note, which is often a good key to the intention of the section, is:

> " Hackney carriages standing in any street to be deemed to be plying for hire, and the driver refusing to go with any person, liable to a penalty of 40*s*."

Section 35 thus imposed an obligation on a driver who was standing in a street or place to accept a fare if required so to do, and imposed a penalty on him if he refused to do so. The London Hackney Carriages Act, 1843, brought within the limits of the Hackney Carriage Acts the whole of the metropolitan police district, to which the Act of 1831 did not apply. Section 33 provided:

> " . . . Every driver of a hackney carriage who shall ply for hire elsewhere than at some standing or place appointed for that purpose, or who by loitering or by any wilful misbehaviour shall cause any obstruction . . . shall for every such offence forfeit the sum of 20*s*."

As is plainly shown by the marginal note and by the clear words of the section, that section was designed to deal with obstruction. The marginal note is:

> " Penalty on drivers for loitering or causing any obstruction, refusing to take passengers, demanding illegal fares, etc."

The section prohibits plying for hire elsewhere than at an appointed standing or place. There are thus two distinct sections dealing with two distinct states of affairs and imposing distinct penalties. The first deals with a driver refusing to take a fare when he is plying for hire in a street or public place, and the second provides a penalty for plying for hire elsewhere than at an appointed standing or place. It was under the Act of 1843 that cab-ranks were first established.

In *Skinner* v. *Usher* (1) a cab driver was summoned under s. 33 of the Act of 1843 and for the same offence as the defendant in this case. The court held that the words " ply for hire elsewhere than at some standing or place " meant ply for hire elsewhere than at some public standing or public place and did not affect a man standing or plying for hire in a private place. That was the state of the law when the London Passenger Transport Act, 1934, was passed. By s. 112 of that Act:

> " Any premises comprising a railway station of the board and the precincts thereof and the approaches thereto which are situate within the limits of the London Hackney Carriage Act, 1831, as amended by subsequent Acts shall be deemed for the purposes of s. 35 of that Act to be a street or place."

That means that, if a cab is standing outside one of the stations of the London Transport Executive (who superseded the London Passenger Transport Board by virtue of the Transport Act, 1947, s. 5 (3), s. 12 (1), and sched. III), it is deemed to be standing in a street or place for the purposes of s. 35 of the Act of 1831

(1) (1872), 36 J.P. 693; L.R. 7 Q.B. 423.

and, therefore, the driver is bound to accept a fare if a fare desires to hire him, and if he does not do so he is liable to a penalty of £2. It is argued that s. 112 overrules the decision in *Skinner* v. *Usher* (1) and provides in effect that for the purposes of s. 33 of the Act of 1843, which is nowhere referred to in the London Passenger Transport Act, 1934, a person can no longer stand on private property when he is plying for hire, but I can find nothing in the Act of 1934 which in any way overrules *Skinner* v. *Usher* (1), nor do I think it was intended to overrule that decision. The Act has merely made a cabman guilty of an offence if, while standing outside a London Transport station in his cab, he refuses to take a fare, and that is the offence created by s. 35 of the Act of 1831.

In my opinion, no offence has been committed here under the Act of 1843, and for these reasons I think the justices came to a wrong decision in point of law and the appeal must be allowed.

SLADE, J.: I agree and for the same reasons.

DEVLIN, J.: I agree.

Appeal allowed.

Solicitors: *A. E. Johnson* (for the appellant); *Solicitor, Metropolitan Police* (for the respondent). T.R.F.B.

(1) (1872), 36 J.P. 693; L.R. 7 Q.B. 423.

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(KARMINSKI, J.)

June 4, Oct. 11, 12, 25, 1951

GORST v. GORST

Divorce—Connivance—Termination—General consent to husband's adultery—Forgiveness and condonation—Subsequent adultery without consent.

In October, 1949, the wife gave a general consent to the husband's adultery, but excluded from her consent adultery with Miss N. The husband began to commit adultery with Miss N. in January, 1950, when he told his wife, untruly, that he was associating with another woman. The wife begged him to give up the other woman, and in March, 1950, he told his wife, again untruly, that he had done so. Believing the husband was telling the truth the wife forgave him his past adultery and attempts were made between the parties to resume marital intercourse. The husband continued his adultery and this was later discovered by the wife who filed a petition for divorce on the ground of the adultery.

HELD: the wife had withdrawn her consent to the husband's adultery and had forgiven his past adultery before the petition was filed; her connivance had spent itself; and so for the purposes of the present suit she had not connived at adultery within the meaning of s. 4 of the Matrimonial Causes Act, 1950.

Dictum of LORD WESTBURY, L.C., in *Gipps* v. *Gipps & Hume* (1864) (11 H.L. Cas. 13), not followed.

PETITION for divorce by the wife on the ground of the husband's adultery with a woman named.

The petition, which was undefended, was heard on June 4, 1951, before KARMINSKI, J., and was adjourned in order that counsel for the King's Proctor might be heard on the issue of connivance.

The parties were married in 1945. The husband was unable to consummate the marriage and this led to a breakdown in his health in 1947, when he had to go to a mental hospital for observation, but eventually the marriage was consummated and a child was born in 1949. After the birth of the child the husband's attempts to renew sexual intercourse were for the most part unsuccessful, and

in October, 1949, he suggested that, if he were sexually successful with another woman, his inhibitions with regard to his wife would probably be cured. At first the wife refused to consider the suggestion, but, fearing another breakdown in the husband's health, she reluctantly consented, although she believed the attempt with another woman would not be successful. The husband then suggested that he should make his attempt with a Miss Nichol, the woman named in the petition, who was well known to the parties. This suggestion was abhorrent to the wife, and she told her husband so in clear terms. The husband then told his wife that he had found another woman whose name he refused to disclose and that he was no longer seeing Miss Nichol. No sexual intercourse took place between the parties from October, 1949, until March, 1950, when the husband informed the wife that he had given up the other woman. She forgave him and attempts were made to renew sexual intercourse, but these were only partially successful. In June, 1950, the husband said that he had only just given up the other woman, and in September, 1950, he confessed that the other woman had all along been Miss Nichol. He said he could not give her up, and asked his wife's leave to see her two or three times a week. The wife refused. The husband left the wife in October, 1950, and had since cohabited with Miss Nichol. The wife petitioned for divorce on the ground of adultery.

A. R. Ellis for the petitioner.

Colin Duncan for the King's Proctor. *Cur. adv. vult.*

Oct. 25. **KARMINSKI, J.,** read the following judgment in which he stated the facts and continued: I have found that the wife consented to the husband's adultery before its inception, but that she clearly excluded from her consent his adultery with Miss Nichol. The adultery alleged in these proceedings is adultery with Miss Nichol and with no other woman. This question now arises: Can a petitioner give a consent to adultery excluding a person or class of persons and thereafter escape a finding of connivance if the adultery has been committed with the person or persons excluded? There have been many passages in decided cases and in the text-books which suggest that adultery with one person which has been connived at excludes all relief in respect of subsequent adultery with another. Counsel for the King's Proctor agreed that the principle thus stated is too wide and suggested in its place the proposition that once the court has found connivance it must investigate all the circumstances, including the lapse of time between the adulteries, and then decide whether or not the connivance has spent its force before the subsequent adultery has been committed.

I believe this to be the true view. Two cases can be cited to illustrate the point. In *Lovering* v. *Lovering* (1) a husband alleged adultery by his wife with B, which was not disputed by her. Shortly before this adultery the husband had noticed great familiarities in his house between his wife and another man, his apprentice, whom he had allowed to continue in the house. There followed, as LORD STOWELL (then SIR WILLIAM SCOTT) stressed, proved criminality with another man, nearly contemporary. Dismissing the petition, LORD STOWELL summed up the matter in the following terms (3 Hag. Ecc. 87):

> "The case then comes almost to this. Can a man, consenting to adultery with A., but not consenting to adultery with B., take advantage of that adultery, and say to the Ecclesiastical Court, '*Non omnibus dormio.*' This is language not to be endured. The Ecclesiastical Court requires two things —that a man shall come with pure hands himself, and shall have exacted a due purity on the part of his wife: and if he has relaxed with one man he

(1) (1792), 3 Hag. Ecc. 85.

has no right to complain of another. I think, in this case, the husband is not entitled to relief, having consented to the turpitude of his wife. I dismiss the suit."

In so expressing himself I do not think that LORD STOWELL meant to state that in no circumstances and after no lapse of time could a spouse ever rid himself of the taint of connivance. Indeed, the contrary view was expressed by SIR WILLIAM WYNNE in *Hodges* v. *Hodges* (1). That case was decided in the Arches Court of Canterbury nearly three years after *Lovering* v. *Lovering* (2), and it is at least of interest to note that in *Hodges* v. *Hodges* (1) leading counsel for the petitioner was SIR WILLIAM SCOTT himself, though his argument is not reported and it looks possible that SIR WILLIAM WYNNE overlooked *Lovering* v. *Lovering* (2) and also *Timmings* v. *Timmings* (3). In *Hodges* v. *Hodges* (1) the material point was this. The husband had connived at the respondent wife's adultery prior to 1785, when they separated. The adultery complained of by the husband was with another man and began in 1789. SIR WILLIAM WYNNE found on those facts that the connivance was not proved. As reported, his reasons are not very clearly stated, but I think his decision was based on the length of time between the adulteries and the inference that the connivance of 1785 had spent its force by 1789.

The doctrine that connivance at adultery with one person precludes relief on the ground of adultery with another finds its greatest support in some observations to be found in *Gipps* v. *Gipps & Hume* (4). In his speech LORD WESTBURY, L.C., used the following expressions (11 H.L. Cas. 13):

> "If a husband is proved to have connived at the adultery of his wife with A., he cannot obtain a dissolution of marriage on account of her adultery with B.; nor if he has connived at adultery committed by his wife with a particular person at one time, can he complain of adultery committed with the same person at a subsequent time."

These observations, however, were, in my view, *obiter*, since they were not necessary to the decision of the case then before their Lordships. LORD CHELMSFORD (*ibid.*, 28) appeared to dissent from LORD WESTBURY'S observations, but pointed out (*ibid.*, 29) that he was confining himself to the case before him which was that of a husband who had sold his right to a separation to the wife's paramour and could not thereafter obtain relief on the grounds of her adultery with the same individual. Mr. Gipps made no charge against his wife of adultery with anyone except Mr. Hume. He had taken money from Mr. Hume and had then left his wife to resume her adulterous association with him. While the principle suggested by LORD WESTBURY, which I have quoted, must be regarded with respect, I am not bound by it and do not propose to follow it.

Having discussed the principles of law involved, I must now apply them to the facts of the present case. The wife gave a general consent to the husband's adultery in October, 1949. I find that his adultery with Miss Nichol began not later than January, 1950, when he told his wife that he had found another woman, though the exact date cannot be ascertained with certainty. The husband told the wife that the woman was not Miss Nichol, but this was untrue. The wife begged the husband to give up the other woman, and in March, 1950, the husband told the wife, though again untruly, that he had done so. Acting in the belief that the husband was telling her the truth, the wife

(1) (1795), 3 Hag. Ecc. 118.
(2) (1792), 3 Hag. Ecc. 85.
(3) (1792), 3 Hag. Ecc. 76.
(4) (1864), 11 H.L. Cas. 1.

forgave him and attempts were made to renew sexual intercourse. In short, I find that the wife condoned the adultery at which she had connived in the erroneous belief that the adultery had ceased. The husband continued his adultery, and this was later discovered by the wife. I have to ask myself whether the wife's connivance had spent itself. The question is not an easy one to answer, but after full consideration I am of the opinion that it had, since she withdrew her consent to his adultery and forgave his past adultery before the present petition was filed. I am satisfied that the wife has not connived at the husband's adultery within the meaning of s. 4 of the Matrimonial Causes Act, 1950, and I pronounce a decree *nisi* of dissolution accordingly. *Decree nisi.*

Solicitors: *Hunters* (for the petitioner); *The King's Proctor.* G.F.L.B.

KING'S BENCH DIVISION

(LORD GODDARD, C.J., SLADE AND DEVLIN, JJ.)

Oct. 24, 25, 1951

REX *v.* RECORDER OF GRIMSBY, *Ex parte* PURSER

Borstal Training—Committal to quarter sessions for sentence—Proceedings before court of summary jurisdiction—Admission by defendant, but no strict proof of age—No evidence on oath as to other relevant matters—Validity of committal—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 20 (3), (5).

Justices—Procedure—Plea of Guilty—Desirability of evidence on oath.

One M. appeared at a court of summary jurisdiction on a charge of larceny, to which he pleaded Guilty. Before the plea was taken, he had been asked his age by the clerk of the court and said that he was seventeen. No evidence on oath was given before the justices, but an inspector of police made a statement outlining the facts of the case and giving particulars of M.'s antecedents. At a subsequent hearing the justices had before them a report from the Prison Commissioners under s. 20 (7) of the Criminal Justice Act, 1948, stating that M. was physically and mentally suitable for Borstal training. The justices then committed M. to quarter sessions for sentence under s. 20 (3) of the Act. At quarter sessions the recorder upheld an objection taken on behalf of M. that the committal was bad on the ground that there had been no proper proof of M.'s age before the justices and that no evidence on oath as to the matters specified in s. 20 (1) of the Act had been given before them, and he ordered M. to be discharged from custody. On an application by the prosecutor for *certiorari* to quash the order of the recorder and for *mandamus* calling on the recorder to pass sentence on M.,

HELD: that, M. having admitted that he was seventeen years of age and the justices having seen him and having had no reason to doubt that he was speaking the truth, proof of age was unnecessary, and that, in view of the duty imposed on quarter sessions by s. 20 (5) of the Act to inquire into the offender's character and previous conduct, and the circumstances of the offence, it was unnecessary that evidence regarding those matters should have been given on oath before the justices. It was the duty of the recorder, on the committal being produced and evidence of identification being given, to pass sentence under s. 20 (5), and orders for *certiorari* and *mandamus* would issue accordingly.

Per curiam: in the absence of any statutory provision setting out the procedure to be followed in a court of summary jurisdiction when an accused pleaded Guilty, it was not desirable for the Divisional Court to lay down a particular rule of procedure. It was a matter for the justices to decide for themselves, though, if the accused person objected that the statement of facts by the prosecution was not correct it would be advisable to hear sworn evidence.

MOTIONS for orders of *certiorari* and *mandamus*.

One John Arthur Middleton appeared at Grimsby magistrates' court charged with stealing a cycle, to which charge he pleaded Guilty. He also asked that

three outstanding offences should be taken into consideration. Before the plea was taken he had been asked his age by the clerk of the court, and he said that he was seventeen. No evidence was given on oath before the magistrates, but an inspector of police made a statement outlining the facts of the case and giving particulars of Middleton's antecedents. On a subsequent hearing the magistrates had before them a report from the Prison Commissioners under s. 20 (7) of the Criminal Justice Act, 1948, stating that Middleton was physically and mentally suitable for Borstal training. The magistrates thereupon committed Middleton to quarter sessions for sentence under s. 20 (3) of the Act. At quarter sessions objection was taken on behalf of Middleton that the committal was bad on the ground that there had been no proper proof of Middleton's age before the magistrates and that no evidence at all on oath had been given before them. The recorder held that the committal was bad and ordered Middleton to be discharged from custody. The applicant, Police Inspector Furser, obtained leave to apply for an order of *certiorari* to quash the order of the recorder and for an order of *mandamus* calling on the recorder to pass sentence on Middleton.

G. D. Roberts, K.C., and *J. Malcolm Milne* for the applicant.

T. R. Fitzwalter Butler for the offender.

R. J. Parker for the recorder of Grimsby.

LORD GODDARD, C.J.: The applicant moves for an order of *certiorari* to bring up and quash an order made by the recorder of Grimsby directing that John Arthur Middleton should be discharged out of custody, and also for an order of *mandamus* directing the recorder to hear and determine the case against Middleton under s. 20 (5) of the Criminal Justice Act, 1948, and to decide what sentence should be passed on him, he having been committed by justices to quarter sessions for sentence under s. 20 (3). The accused, who is said to be, and to have admitted that he is over seventeen years of age, pleaded Guilty before the Grimsby justices to a charge of cycle stealing.

There is no statutory provision enacting the procedure in a court of summary jurisdiction when an accused person pleads Guilty. Some courts take evidence on oath; other courts do not think that necessary and deal with a plea of Guilty in the same way as does a court of assize. Generally at assizes or quarter sessions, if convictions have to be proved, evidence on oath is given by a police officer, but, so far as the circumstances of the case are concerned, the court hears only a statement by counsel. As there is no statutory provision, I do not think it would be desirable for this court to lay down any particular rule of practice to be observed by courts of summary jurisdiction one way or the other. Often it may be desirable for the court to hear some evidence on oath, but this is not necessary in the many cases which are very trivial and the facts can be stated informally. Of course, if the accused person says that the facts have not been stated correctly, the justices would be well advised to have the informant sworn so that he can be cross-examined, but in a case where no question arises I am not prepared to say as a matter of practice that courts of summary jurisdiction are bound to, or need, take evidence on oath where there is a plea of Guilty.

The question arises here whether there should be any difference from the usual practice where the justices are proposing to act under s. 20 (3) of the Criminal Justice Act, 1948, and commit a person to quarter sessions for sentence. Section 20 provides:

> "(1) Where a person is convicted on indictment of an offence punishable with imprisonment, then if on the day of his conviction he is not less than sixteen but under twenty-one years of age, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of

the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution . . . (3) . . . the court may commit him in custody to quarter sessions for sentence in accordance with the following provisions of this section."

When a person is so committed for sentence the following provisions in s. 20 (5) apply:

"(a) the appeal committee or court of quarter sessions shall inquire into the circumstances of the case and may—(i) if satisfied of the matters mentioned in sub-s. (1) of this section, sentence him to Borstal training . . ."

The matters they have to be satisfied about, it is clear, have reference to whether, having regard to the offender's character and previous conduct and the circumstances of the offence, it is expedient that he should be sent to Borstal.

The first point made in this case was that the committal was bad because there had been no evidence before the justices of the age of the accused. The accused admitted that his age was seventeen. What is the necessity of proving that statement if the justices, having before them a person who appears to be about seventeen, hear him say that he is seventeen? He is admitting he is over sixteen and that he is under twenty-one. If in any case the justices were not satisfied, it would be right that they should hear evidence, but if, using ordinary observation and common sense, and having heard an accused person state his age, the justices come to the conclusion that he has told them the truth, I do not see the least necessity for evidence on the matter to be called. If an accused person can admit that he is guilty of the offence, I cannot see why he cannot admit that he is seventeen years of age. In *Rex* v. *Turner* the accused, who was over a certain age, had been convicted, and, giving the judgment of the court, CHANNELL, J., said (1):

"In order that a person may be found to be a habitual criminal it is necessary that the jury should find on evidence that he has previously been convicted three times since he was sixteen years of age. The jury must therefore return their verdict on evidence, but there may be cases in which no doubt can arise. For example, convictions against the prisoner, three in number, may be proved to have all taken place within the last year, and it may be perfectly obvious to everybody that the prisoner is very considerably over sixteen years of age at the time of the inquiry, and, therefore, must have been over sixteen when those convictions took place. There are, therefore, cases in which no difficulty can arise. But at least three previous convictions since the age of sixteen must be proved, and when the prisoner is of an age which makes it doubtful whether he may not have been under the age of sixteen at the date of the first conviction which is alleged against him, some further evidence is necessary; but the fact that the prisoner has stated at a particular time that he is a particular age would be sufficient. The statement of a prisoner's age in the court calendar is generally derived from statements made by the prisoner himself. As I understand the practice, the governor of the gaol is responsible for the calendar and the statement of the prisoner's age in the calendar is equivalent to a statement that the prisoner so gave his age, but in all cases where the jury would not be prepared to act upon their own view without evidence it must be proved. If the governor or the gaoler were to give evidence to the effect that 'I cannot recollect whether I examined this man myself, but in the course of our regular procedure the man when he comes into gaol gives his age, and the age in the calendar was given to me as that which he stated it to be,' I think

(1) 74 J.P. 86; [1910] 1 K.B. 362.

that would be sufficient, because the official says that the age mentioned in the calendar is that which was reported to the prison authorities as the prisoner's age by the prisoner himself, and that kind of evidence would be sufficient; but in all cases where the prisoner's appearance is not sufficient to satisfy the jury some kind of evidence must be given."

In *Rex* v. *McCann* (1) the accused was convicted of larceny at quarter sessions, and the ground of his appeal to the Court of Criminal Appeal, after he had been sent to Borstal training, was that he was convicted on his twenty-first birthday, and, consequently, was too old to be sent to a Borstal institution. No age had been given, but LORD READING, C.J., giving the judgment of the court, said (6 Cr. App. Rep. 116):

> "By the Prevention of Crime Act, 1908, the appellant was liable to be sent to a Borstal institution if it appeared to the court that he was not less than sixteen nor more than twenty-one years of age."

In that case it did appear to the court that he was not more than twenty-one years old. The court was informed that he was twenty and had no reason to doubt it. There are no words in s. 20 of the Act of 1948 which in any way affect the matter, because sub-s. (1) only says: "if on the day of his conviction [the accused] is not less than sixteen." The section does not say that the court has to be satisfied, either on a view of the accused or anything else. So far as age is concerned, I am clearly of opinion that there is nothing in the point which has been urged.

Counsel for the accused also argued that a committal is bad if the accused is committed by the justices for sentence without evidence on oath having been taken, because without such evidence the justices cannot be satisfied, having regard to his character and previous conduct, and the circumstances of the offence, that he is a suitable person for Borstal training. Those, however, are the very things into which quarter sessions has to inquire. Is quarter sessions also to inquire whether the justices below were satisfied about a certain matter? They have shown they were satisfied by having committed the accused for sentence. I think, therefore, that it would be idle for quarter sessions to inquire into what was before the justices and why they were satisfied or how they were satisfied, because if quarter sessions are not satisfied it is a proper case in which to impose a sentence of Borstal training, they do not send an offender to Borstal. In my opinion, the recorder had jurisdiction to deal with the accused under s. 20 (5). For these reasons the order discharging him from custody will be quashed, and an order of *mandamus* will go to the recorder directing him to deal with the accused who should be given notice to appear at the next quarter sessions. If he does not appear, he must be taken into custody.

SLADE, J.: I agree.

DEVLIN, J.: I also agree. *Orders for certiorari and mandamus.*

Solicitors: *Hyde, Mahon & Pascall*, agents for *L. W. Heeler*, town clerk, Grimsby (for the applicant); *Biddle, Thorne, Welsford & Barnes*, agents for *Hudsons, Hart & Borrows*, Richmond, Yorks (for the offender); *Treasury Solicitor* (for the recorder of Grimsby).

T.R.F.B.

(1) (1911), 6 Cr. App. R. 115, 116.

[END OF VOLUME 115]

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXV. No. 52.
Pages 817-832

LONDON: SATURDAY, DECEMBER 29, 1951

Offices: LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper]

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

NOTES of the WEEK

More about the Suffix

In connexion with our article at p. 774, *ante*, on the suffix J.P., an experienced contributor suggests yet another reason why the suffix should be used. There are many documents which can be witnessed by a justice, and there are some functions which he has to perform at the request of other public officers, who may not always know where to find a justice in a hurry. It is, therefore, in the public interest that the suffix be freely used. The argument is, perhaps, not one to carry too far. In villages and country places it is usually well enough known who are the local justices, apart in these days from those who have gone on the supplemental list, but can still make themselves useful in accordance with s. 4 of the Justices of the Peace Act, 1949. There can have been no doubt in Huckley that Sir Thomas Ingell was chairman of the bench, nor do we imagine that Mr. Wickham allowed his Hampshire neighbours, rich or poor, to remain in ignorance of his judicial office. On the other hand, the suffix J.P.s upon envelopes passing through the post will not spread knowledge of the addressee's status very far. Mr. Machin's clerk Pankethman, and whatever other staff he had in the office of the Thrift Club, his household in Trafalgar Road, and the postmen serving both, will have known in this way that in the year following his mayoralty he was still a magistrate, but his correspondence would hardly tell this to anybody else. Still, there is something in our correspondent's idea and, if a magistrate has no objection to having the letters added to his name when he is announced as opening a flower show or performing some other public duty which involves previous advertisement by poster, his availability will in this way become familiar to a wider circle.

Use with other Suffixes

By a curious coincidence, while our above-mentioned article was with the printer two further queries on which it has a bearing have been put to us by correspondents. The one asks whether under the Justice of the Peace (Size and Composition of Bench) Rules, 1950, S.I. 1950 No. 1908, notices for the election of chairman are to be sent to *ex officio* justices, as well as those in the commission, and whether the *ex officio* justice can be chairman if elected by the secret ballot there prescribed. The answer to this is that neither the Act of 1949 nor the Lord Chancellor's Rules recognize any "non-commissioned" rank for justices. Under the new r. 3 in the Rules of 1950, inserted by r. 2 of the Justices of the Peace (Size and Chairmanship of Bench) (Amendment) Rules, 1951, S.I. No. 1982, the notices must go to all justices who act in the petty sessional division. But as for election, seeing that the chairman of the bench takes office on January 1, and that *ex officio* justice has then only some four months longer service (unless re-appointed mayor of his borough or chairman of his county council or district council as the case may be) it seems unlikely that his brother justices will often appoint him as their chairman. The second query we have mentioned is whether any authoritative rule governs the use of the suffix J.P. in combination with those denoting titles, honours, other offices, or academic distinctions. As we said in our former article, the magistracy is an office, and there is accordingly no such rule about these initials as there is about those indicating honours and some titles, for which the King, or some appropriate dignitary acting for him, such as the Earl Marshal, has laid down a standard practice. In academic circles, where suffixes indicating a university degree are used more freely than in ordinary life, we have noticed that justices who hold a degree, and the officers of the University when sending communications to them, often put this first; we should ourselves put the J.P. in front of the degree, since it denotes an office under the Crown. But there can, we think, be no doubt that a suffix denoting an honour or rank should come first of all, even though it be a comparatively widespread honour, like the rank of officer or member of the Order of the British Empire. To return by way of illustration to a magistrate already mentioned, and his friends: Mr. Machin will, since he was once the youngest mayor in England and was for long years afterwards an alderman, have surely been placed in the commission, but as he is now well over eighty he is, of course, on the supplemental list under s. 4 of the Justices of the Peace Act, 1949. The foundation of the University College of North Staffordshire is pretty sure to have led to his holding also an honorary degree—perhaps in literature, on account of his services to the intellectual drama some forty years ago. We should therefore address him as Alderman E. H. Machin, O.B.E., J.P., Litt.D.: this on the assumption that he has retained in his municipal status, and remembering that he liked to use this, even when registering at a London hotel. Two of his old friends we should address as Robert Brindley, Esq., J.P., F.R.I.B.A., and Angus Stirling, Esq., J.P., M.D., unless we had learnt that this last preferred to be addressed as Dr. Stirling, J.P., rather than as Esquire.

Expiring Laws Continuance Act

The Expiring Laws Continuance Act, 1951, continues in force, among other statutes, the Aliens Restrictions Amendment Act, 1919, the Prevention of Violence (Temporary Provisions) Act, 1939, and the Furnished Houses (Rent Control) Act, 1946.

The Aliens Restriction Acts have become almost like permanent legislation, though the Act of 1919 which refers back to the Act of 1914 would cease to have effect but for its annual renewal. The Prevention of Violence (Temporary Provisions) Act, 1939, confers powers on the Secretary of State to make

orders of expulsion, registration or prohibition, with respect to persons concerned with acts of violence and Irish affairs. It preserves certain penalties for offences and gives certain powers to the police. The Furnished Houses (Rent Control) Act, 1946, is of importance to local authorities because of their duties under the Act, and to justices and clerks because it creates offences punishable on summary conviction.

Probation and Fine

The report of a case in which it was stated that the defendant was put on probation and fined might lead readers without legal knowledge to think that courts could take both courses in respect of one conviction, and might also set others wondering if the court had made a slip. However, it seems clear from a careful reading of the report that the probation order was made upon one conviction and the fine imposed upon another for a similar offence.

Whether the proceedings were summary or on indictment is not stated, but in either event it would not be lawful to add a fine to a probation order upon a single conviction. This was always clear in the case of summary convictions from the wording of s. 3 of the Criminal Justice Act, 1948, but there was at one time a difference of opinion as to the powers of quarter sessions, because of the power conferred by s. 13 to fine in case of felony in substitution for or in addition to dealing with the offender in some other way. These differences were settled by the Court of Criminal Appeal in *R.* v. *Parry and Others* [1950] 2 All E.R. 1179, which decided that to fine as well as make a probation order would be contrary to the clear language of s. 3.

There are magistrates who wish there were power to fine as well as put the defendant on probation, but the law does not allow it, and there are obvious objections. Sometimes the offender can properly be mulct in compensation or damages, which to him may seem much the same as a fine, and sometimes a fine with supervision pending payment may supply for a time some of the benefit of a probation order.

Punishment for Housebreaking

Following upon the suggestion that housebreaking might be included among the indictable offences triable summarily, to which we referred in our note at p. 803, *ante*, comes the expression of the point of view that housebreaking is a serious offence for which inadequate punishment is too often imposed.

Addressing a meeting, Mr. R. M. Howe, assistant commissioner in charge of the C.I.D., New Scotland Yard, said that in the Metropolitan area there were about 6,000 housebreaking offences every year. He had been disturbed for some time about inadequate sentences for housebreaking. Mr. Howe was not advocating anything approaching indiscriminate severity, especially in respect of a first offence. What he urged was that a man who went on making his living by breaking into houses should surely be put away for a long time. Fear of consequences, he said, did operate largely on the mind of a thief.

No one can tell exactly what is the deterrent effect of exemplary sentences, but we believe it to be true that the man who decides to live by crime does often take into consideration to some extent the kind of punishment he is likely to receive if he is caught, especially if the police are meeting with success in bringing offenders to book. There is no question here of sudden temptation or overmastering passion. The persistent law-breaker can possibly be checked in his career, and at all events the public gets protection from him if he receives a long sentence.

Magistrates' Courts Committees

The Magistrates' Courts Committees (Constitution) Regulations, 1951 (S.I. No. 2003), dated November 20, came into force on December 1, and magistrates and clerks who have not yet studied them will need to do so as soon as possible. The first appointment of members from a petty sessional division of a borough on a committee acting for a county or for a borough is to be made at a meeting of the justices held this month or in January, 1952, and in subsequent years the appointments will be made at the meeting of justices at which the chairman is elected. This meeting is to be held in October, in accordance with r. 3 (2) of the Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950, as substituted by para. 2 of the amending Rules of 1951. Nominations are permitted but elections are to be by ballot.

In the case of a county not divided into petty sessional divisions the members are to be appointed at the quarter sessions held in the twenty-one days immediately preceding or immediately following September 29. The first appointments will be made at the quarter sessions held this month or next month.

Ordinarily, members are to hold office for one year from December 1 following their election, but the first appointments are to take effect from February 1, 1952, until December 1, 1953. The rules make provision for filling casual vacancies. Members are eligible for re-appointment.

The rules also provide for the method of electing a chairman and prescribe how many members are necessary to constitute a quorum at a meeting, according to the size of the committe, the size of the committee being also determined by the regulations.

Summary Trial or Committal for Trial

A bench of magistrates recently expressed regret at being unable to sentence a man and his wife to more than six months' imprisonment upon a charge of wilfully neglecting their children so that they suffered unnecessarily. Such offences are against s. 1 of the Children and Young Persons Act, 1933, which enacts that on conviction on indictment an offender may be sentenced to as much as two years, while on summary conviction the maximum is six months.

Section 28 of the Criminal Justice Act, 1948, applies to such prosecutions, and therefore if the court feels that the case could more appropriately be dealt with by quarter sessions it can commit for trial, even though the case has begun as if it were a summary trial, provided the change of procedure from summary to indictable is made before the close of the case for the prosecution. In the particular case to which we are referring it appears that the pleas of the defendants had been taken, the woman had pleaded guilty, and the magistrates could not therefore commit her for trial, *R.* v. *Sheridan* (1936) 100 J.P. 319.

Justices rely to some extent on statements by prosecuting advocates or police officers to inform them, upon inquiry from the bench whether they consider the case suitable for summary trial or not. There will always be occasional border line cases in which there may be a difference of opinion, but more often than not the bench will find itself in agreement with the recommendation of the prosecution. Of course it is open to the justices to proceed under s. 28 (2) as for an indictable offence and to change to summary procedure if they think fit after hearing some evidence.

An Approved School and the General Election

The Approved Schools Gazette contains an account of the way in which the General Election was used in an approved school for boys as a means of instruction. The school was

Thorpatch Grange, and the staff evidently dealt with the matter in a practical and sensible way.

The writer of the article begins by saying that as the State enters more and more into our way of life it has become necessary that children should be taught about our national institutions, the way we are governed and how they are to fit in with the general scheme. As we all know, civics is now a subject in many schools, and some teachers are quite successful in making a beginning with very young children. There are many opportunities of illustrating civics from current events, but general elections are not frequent in this country, and so it was wise to make the most of the recent election as was done at Thorpatch Grange and probably in other schools.

A mock election was held in the school on the eve of election day with plenty of literature available and debates taking place. The boys conducted the whole proceedings, candidates and supporters made speeches, and voters were reminded that they should vote, after listening attentively, according to conscience. "The speeches were surprisingly good and so were the witty questions and wittier answers to the hecklers. When a member of the staff interpolated a question, the chairman reminded us kindly but firmly that this was a school election by the boys for the boys and that adults had their own parliamentary election the following day."

After the meeting there was a properly conducted ballot, votes were counted and the results declared amid great excitement. The value of the mock election was shown by the lively interest taken by the boys in the real election next day, and the writer of the article recommends the experiment as a useful method of teaching one aspect of civics. He concludes with a piece of sound advice: "leave the politics and party propaganda severely to the boys themselves."

Recording Autolycus

Section 86 of the Public Health Acts Amendment Act, 1907, requires dealers in old metal and marine stores to register themselves with the local authority, and to keep a record of every purchase or other acquisition of the articles in which they deal, including the name, address, and occupation of the person from whom the articles have been acquired. Like the remainder of that Act, and much of the other Public Health Acts, the section originated in local legislation and, if scrutinized, is a strange enactment. It has never, so far as we know, been supposed to apply to jewellers, who almost always deal in second-hand as well as new jewellery and plate, which when second-hand is certainly "old metal." Nor has it, we believe, ever been taken to apply to dealers in marine stores proper: that is to say, the things which are specially and specifically required for use on board ship, and are contemplated by the parallel provisions in ss. 538 *et seq.* of the Merchant Shipping Act, 1894. In fact, the section of 1907 contemplates a type of business often combined with those mentioned in s. 154 of the Public Health Act, 1936, which applies to shops as well as to collecting vehicles. No harm, so far as we can see, is done by interpreting it in this specialized way, and there is much to be said for registering the type of dealer mentioned. It is worth while to point out that he must register himself, and the local authority have no power to refuse to register or to remove him from the register—the section does not confer anything like a power of licensing. In the last two years or so there has been a spate of orders putting the section in force: this by reason of the high prices fetched by certain metals, particularly lead, and the almost universal complaints that these are being stolen from places like roofs where they might have been considered safe. The thefts are often believed to be by children; as we go to press we have received a newspaper account of a case now fairly common, where a lad climbed from his own home in a mews to the roof of a neighbouring mansion and got away with two hundredweight of lead which he sold for £15. Church roofs have been robbed in all parts of the country, and we have come across reports of the tearing out of copper pipes from public urinals. We should after forty-four years of its being on the statute book see no objection to making s. 86 of the Act of 1907 a section of universal application (perhaps in an improved form) thus relieving local authorities and the Home Office of the burden of an application in each particular case, for it to be put in force by the Secretary of State. There would be no harm in clearing up the overlap, so far as overlap or ambiguity exists, between s. 86 of 1907 and the above-cited sections of the Merchant Shipping Act, 1894, or in introducing into s. 86 the prohibition on transactions with persons apparently under the age of sixteen years which occurs in s. 539 (1) of 1894.

Pedestrian Crossings

It is too soon to say whether or not the zebra crossings are a success but there is plenty of evidence that many motorists are only too willing to conform to the new arrangements if pedestrians will do their part—by which we mean if pedestrians will use the crossings reasonably. It is not reasonable to step off the pavement when a car is within a yard or two of the crossing and compel the motorist to brake with great suddenness or for pedestrians to hesitate on the crossing and puzzle the driver as to what he had better do. To expect drivers to approach the crossings at a snail's pace in case a pedestrian might decide to cross at the last minute would mean that traffic would become hopelessly congested, and that would not help solve the traffic problem.

On their part, motorists should be, as most of them are being, ready to make the zebra crossing safe, and to make allowances for the slow and elderly. At present, also, it may be necessary to allow for some people who still think the so-called obsolete crossings are vested with all their former protection for pedestrians. Really, it is largely a matter of courtesy and consideration. It is always an offence, under s. 12 of the Road Traffic Act, for a driver to fail to show reasonable consideration for other road users, as a defendant found recently, when he was fined by a magistrates' court, he having, according to the police, shown a total disregard of persons who were using an obsolete crossing, and said: "There isn't any need to stop for them now; it is not a zebra crossing." Fortunately, that is not a general attitude, but it is sometimes found to exist. Mutual courtesy and consideration is the basis of road safety.

Extended Water Byelaws

On September 29, 1951, the Minister of Local Government and Planning made an order under the proviso to s. 19 (6) of the Water Act, 1945, extending for two years longer, *i.e.*, until the end of September, 1953, the life of certain byelaws which by virtue of s. 19 should have expired on September 30, 1950. These are byelaws made under powers contained in Acts earlier than 1945, for preventing pollution of the water of undertakers, by prohibiting or regulating the doing of acts specified in the byelaws within an area so specified. The powers in question became general in s. 18 of the Act of 1945, which was based on local Act precedents. These precedents were not numerous. While the march of knowledge renders it unwise, as a rule, to keep in force for more than ten years without overhaul byelaws on the subjects named in s. 17 of the same Act, no great harm can follow from a renewed lease of life up to September, 1953, for those made under special Act powers similar to s. 18.

PAGES FROM OUR SOCIAL HISTORY
SOME REFLECTIONS FROM THE J.P. OF 1851

It is felt that the year 1951 should not be allowed to pass without some regard being paid to the rich store of evidence on our social history which can be enjoyed from a perusal of the *Justice of the Peace and County, Borough, Poor Law Union, and Parish Law Recorder*, as it was then called, for 1851.

The general prosperity of the country is evident from many passages, yet the pages also show that the need for many reforms was widely felt. The following extracts are taken from the Queen's Speech of August 8, 1851. (p. 513): " It has been very gratifying to me on an occasion which has brought many foreigners to this country, to observe the spirit of kindness and good-will which so generally prevailed. It is my anxious desire to promote among nations the cultivation of all those arts which are fostered by peace, and which in their turn contribute to maintain the peace of the world.

" In closing the present session, it is with feelings of gratitude to Almighty God that I acknowledge the general spirit of loyalty and willing obedience to the law which animates my people. Such a spirit is the best security at once for the progress and the stability of our free and happy institutions."

Yet the earlier sentences in Her Majesty's speech for February 4, 1851 (p. 78), with its reference to the pressing problem of Germany and the need for economy has a curiously topical flavour: " I trust that the affairs of Germany may be arranged by mutual agreement, in such a manner as to preserve the strength of the confederation and to maintain the freedom of its separate States . . . I have directed the estimates of the year to be prepared and laid before you without delay. They have been framed with due regard to economy, and to the necessities of the public service . . . The state of the commerce and manufactures of the united kingdom has been such as to afford general employment to the labouring classes. I have to lament however, the difficulties which are still felt by that important body among my people who are owners and occupiers of land."

CRIME AND PUNISHMENT

The " J.P. " for 1851 contains some fascinating information in the form of extracts from the House of Commons papers and other documents on the prevalence of crime and the methods of treatment. We learn from p. 566 from a House of Commons return that the number of male convicts sentenced to transportation in England and Wales in 1850 was 2,256. The number of escapes in 1850 was twenty-nine, nine from the hulks and twenty from other prisons, of whom sixteen were retaken. From a similar source details of absorbing interest are given of the last executions in England for such offences as horse or sheep stealing; space only permits the following extracts: " The last execution for a simple offence of theft was in 1834, when one convict was executed for stealing to the value of £5 in a dwelling-house. The last execution for any description of theft was in 1836, when five persons were executed for robbery and burglary. Since that year, with the exception of three executions for attempts to murder, the last of which was in 1841, murder has been the only offence for which the punishment of death has been inflicted." (p. 626).

IN DEFENCE OF CORONERS

The office of coroner, has, it seems, often been assailed by critics but seldom can a more eloquent case have been made for its retention as this: " A great calamity, happening under suspicious circumstances has aroused the attention of the citizens of London to the value of an office which it has of late years been the fashion to underrate. Because a few foolish verdicts have been returned by coroners' juries, or a few inquisitions quashed for want of form, coroners and inquests were assailed as if they were mere burdensome relics of a bygone age . . . . There can be no doubt that to the office of coroner, Englishmen of the present day are much indebted for that respect for life, which is the most real and efficient guard of personal safety in this country . . . and there can be no doubt that the coroners inquiries opposed, in all ages of our history, the first obstacle to the wanton sacrifice of life, in which the wilfulness of power was so often much inclined to indulge " (p. 430).

ABOLITION OF THE WINDOW TAX

The Queen's speech of August 8, 1851, referred to the abolition of the window tax in the following terms: " It is satisfactory to observe that notwithstanding very large reductions of taxes, the revenue for the past year considerably exceeded the public expenditure for the same period . . . I am rejoiced to find that you have thereby been able to relieve my people from an impost which restricted the enjoyment of light and air in their dwellings. I trust that this enactment, with others to which your attention has been and will be directed, will contribute to the health and comfort of my subjects."

The Act itself (14 Vict. c. 36) which received the Royal Assent on July 24, 1851, has the following title: An Act to repeal the duties payable on dwelling-houses according to the number of windows or lights, and to grant in lieu thereof other duties on inhabited houses according to their annual value.

The depressing atmosphere of many Victorian railway station waiting rooms may be partly attributed to the tax case reported on p. 211 which charged the Midland Railway Co. with window tax on railway stations.

THE GENESIS OF MODERN HOUSING LEGISLATION

The Common Lodging Houses Act, of 1851, introduced by Lord Ashley, is now regarded as the genesis of modern housing legislation and it is noteworthy that the Editors of the " J.P. " recognized its importance and commended it in these words: " The number of widowers, widows, and orphans in ninety-five unions caused by cholera alone was 2,317 and most of them are permanently chargeable on the poor rate. If but one half of these could have been prevented by the system so zealously advocated by Lord Ashley, surely both humanity and self interest prompt us to its adoption. Upon every ground, therefore, whether social, moral, or fiscal, we wish him all possible success; and would urgently call both upon municipal and parochial authorities to give him such support which his enlightened and philanthropic exertions so eminently entitle him to claim " (p. 254).

The preamble to Lord Ashley's Act runs as follows: " Whereas it would tend greatly to the comfort and welfare of many of Her Majesty's poorer subjects if provision were made for the well ordering of common lodging houses."

POLICE

The following extract from a Petition to the House of Commons by the Worcestershire Epiphany Quarter Sessions of 1851 might have been the preamble to the Police Act of 1946: " Your Petitioners humbly but earnestly pray your honourable house to pass an Act providing for the payment of a police force from

the general funds of the country, establishing it on an extended and improved system, and consolidating the rural with the borough police throughout the kingdom, by which means the burdens of the local ratepayers will be lightened, and an efficient constabulary maintained. (p. 31).

In contrast to the modernity of the last quotation, the following editorial from 1851 on the suggestion that the duties of policemen and roadmen should be combined, would now be considered heretical : " A very sensible suggestion has recently emanated from the North of England, and Cumberland appears to claim the honour of having first made it . . . The proposition to which we have alluded, is, that there shall be a union of the duties of road maker and police constable, and that instead of private gentlemen being taken from their occupations to perform the duties of surveyors of the roads, there shall be districts in each county, over which shall be appointed a surveyor, who is to be at the same time the chief police constable of that district . . A policeman now idles away many hours which under such a system might be beneficially employed, and it would give to all persons resident in the country, or travelling there a sense of security hitherto unknown " (p. 462).

We also learn from p. 43 that the average pay of constables throughout England was 18*s.* 1*d.* per week.

THE EXHIBITION OF THE WORKS INDUSTRY OF ALL NATIONS, 1851

The year 1851 did not pass without reference in the pages of the " J.P." to the " Exhibition of the Works of Industry of all Nations " as Parliament called the " Great Exhibition " in an Act passed on April 11, 1851. " To give protection from piracy to persons exhibiting new inventions " at the exhibition (p. 544). From the Legislative Intelligence on p. 496, it is learnt that although the importance of the exhibits was recognized, there was substantial opposition to the motion : " That an humble address be presented to Her Majesty, praying that Her Majesty will be graciously pleased to direct in such manner as to her may seem fit, that the crystal palace be preserved until the 1st May next, with a view to determine if that novel structure, or any portion of it, can be adapted to purposes of public utility and recreation." Mr. Heywood. The House divided ; ayes 75, noes, 47."

ALREADY A VENERABLE JOURNAL

Although the " J.P." was only fifteen years old in 1851, it is evident from the comments of " Constant Subscriber " and other correspondents that it was an established institution in the magisterial and local government world. The XVth Volume contained 897 pages, and the subscription was 26*s.* 6*d. per annum*. Acts of Parliament relating to local government and magisterial law were printed in full, and the " J.P." thus provides one of the few sources extant for statutes prior to the Official Statutes of the Council of Law Reporting. Each copy had to bear a stamp duty of 1*d.* and many of the weekly parts still bear the reddish duty stamp. Perhaps some student of our postal history can explain the following oft repeated advertisement for the Binding of the journal by Mr. Robert Shaw : " If the numbers are put into two or three parcels and tied round the centre with the ends left open, they can be forwarded by Post free of expense."

CALLING OF WITNESSES BY JUDGE

[CONTRIBUTED]

In the two previous articles dealing with this subject (*ante*, pp. 759, 791) the question was considered of the duty and the right of the prosecution in a criminal case to call certain witnesses, in the first case the duty to call witnesses whose names are on the back of the indictment, and in the second case the right to call witnesses whose evidence was not taken before the justices and, therefore, is not on the depositions. It is now sought to examine the position where in a criminal trial a witness is called, not by either the prosecution or the defence, but by the presiding judge, and to see in what circumstances this power can be exercised.

In the first place it should be pointed out that there is a material difference in this respect between a civil suit and a criminal prosecution. In a civil suit, as was said by Lord Hewart, C.J., in *R.* v. *Harris* (1927) 2 K.B. 580, at p. 590 : " In civil cases the dispute is between the parties and the judge merely keeps the ring, and the parties need not call hostile witnesses," and in a civil suit neither a judge nor an umpire in an arbitration has any right to call a witness without the consent of the parties : *see In re Enoch and Zaretsky, Bock & Co.* [1910] 1 K.B. 327. This is not the position, however, in a criminal case, and the distinction is expressed in this way by Avory, J., in giving the judgment of the Court of Criminal Appeal in *Harris's* case above. He says this as regards the question whether the course taken by the Recorder in that case in calling one of the prisoners as a witness when the case for the defence had been closed was in accordance with the well recognized rule that governs proceedings at criminal trials, at p. 594 : " As to the first point, it has been clearly laid down by the Court of Appeal in *In re Enoch and Zaretsky, Bock & Co.* that in a civil suit the judge has no right to call a witness not called by either party, unless he does so with the consent of both parties. It also appears to be clearly established that that rule does not apply to a criminal trial where the liberty of the subject is at stake and where the sole object of the proceedings is to make certain that justice should be done as between the subject and the State."

This practice of the presiding judge at a criminal trial calling a witness not called by either the prosecution or the defence, and without the consent of either the prosecution or the defence, if in his opinion this course is necessary in the interests of justice, has been laid down in a number of cases. Thus, in earlier years in *R.* v. *Simmonds* (1823) 1 C. & P. 84, where Hullock, B., in ruling that, though the counsel for the prosecution was not *bound* to call every witness, whose name was on the back of the indictment, it was *usual* for him to do so, went on to state that, if he did not call a certain witness he, as the judge, would call him in order that the prisoner's counsel might have an opportunity of cross-examining him. (The judge did not, in fact, however call the witness as he was then called by the counsel for the prosecution.) In *R.* v. *Holden* (1838) 8 C. & P. 606, Patteson, J., in a trial for murder, insisted on a surgeon being examined who was in court but who was not called on the part of the prosecution, and who had carried out a *post mortem* examination of the body of the murdered person in the presence of another surgeon who had been called by the prosecution and of a surgeon who had been called by the defence, although the clerk of assize stated that his name was not on the back of the indictment. In so doing the learned judge stated that he was a material witness who was not called on the part of the prosecution, but that, as he was in court, he should call him for the furtherance of justice, and the surgeon was then called and was examined by him : *see* also *R.* v. *Chapman, ibid.*, 558 (*cf.*,

R. v. *Stroner* (1845) 1 C. & K. 650, where Pollock, C.B., directed that in a trial for rape two witnesses, who were attending the court as witnesses for the prisoner and whose names were not on the back of the indictment and who had not been bound by recognizance to give evidence at the trial, should both be called as witnesses for the prosecution, although he stated that he would allow the counsel for the prosecution every latitude in examining them).

The course taken by Patteson, J., in *Holden's* case was, however, not followed in *R.* v. *Edwards* (1848) 3 Cox C.C. 82, where Erle, J., in refusing himself to exercise the power to call a certain witness whom counsel for the prosecution had refused to call, says: "There are, no doubt, cases in which a judge might think it a matter of justice so to interfere; but, generally speaking, we ought to be careful not to overrule the discretion of counsel, who are, of course, more fully aware of the facts of the case than we can be." Similarly, in *R.* v. *Wiggins* (1867) 10 Cox C. C. 562, Lush, J., in a trial for murder refused at the request of the defence to call a witness who had been examined before the coroner, but had not been called by the prosecution.

The question then arises at what stage of the proceedings can a witness be called by the judge? Can he be called after the case for the defence has been closed? The court in *R.* v. *Frost* (1839) 4 St. T. (N.S.) 86 had to consider this question, not in relation to the calling of a witness by the judge, but in relation to the calling of a witness by the prosecution, and the ruling there laid down by the court of three judges in a trial for treason was adopted in *Harris's* case as governing also the position where a witness is called by the judge. There the prosecution applied to be allowed to call, after the witnesses for the defence had been called and before the counsel for the defence addressed the jury, a witness named Hopkins, a superintendent of police, who had been called to produce certain exhibits but had not been asked any questions, in order to contradict a statement made by one of the witnesses for the defence, named Gould, that he (Hopkins) had asked him a certain question. In allowing the prosecution to call Hopkins, Tindal, C.J., says at p. 386: "How was it possible for the Crown to foresee that Gould would fix upon Hopkins a particular conversation? If they had examined Hopkins through the whole transaction it never could have occurred to them to put that precise question; but when the fact comes out on the other side it appears to me that they may call Hopkins to prove whether it is a true statement." The Chief Justice had previously had to consider at what stage such a witness could be called, saying: "There is no doubt that the general rule is that where the Crown begins its case like a plaintiff in a civil suit, they cannot afterwards support their case by calling fresh witnesses, because they are met by certain evidence that contradicts it. They stand or fall by the evidence they have given. They must close their case before the defence begins; but if any matter arises *ex improviso*, which no human ingenuity can foresee, on the part of a defendant in a civil suit, or a prisoner in a criminal case, there seems to me no reason why that matter which so arose *ex improviso* may not be answered by contrary evidence on the part of the Crown. (It may be noted that in *R.* v. *Crippen* [1911] 1 K.B. 149, a case of murder, the Court of Criminal Appeal refused to apply the ruling of Tindal, C.J., as strictly as he had laid down as regards the right of the prosecution to call a witness after the close of the case for the defence, holding that, assuming the evidence of such a witness to be admissible, it then becomes a question for the judge at the trial in his discretion whether the evidence, not having been tendered in chief, ought to be given as rebutting evidence.) Again, in *R.* v. *Haynes* (1859) 1 F. & F. 666 Bramwell, B., refused to allow counsel in a murder case where the defence of insanity was set up to call a witness, the surgeon of the gaol, to speak as to the state of the prisoner's mind after the witnesses had been called for the defence, and counsel had replied on the part of the prosecution. In considering whether, however, he (the judge) should call the witness, but declining to do so, the learned judge says: "It is quite clear that counsel cannot call him, as the cases are closed; and if it were allowed, it would necessitate two more speeches. The only doubt I have is, whether I should examine him, as to which I will consult my brother Crompton"—(Having done so)—"We are both of opinion that it is better to abide by the general rule, and that it would be inexpedient to allow this fresh evidence to be gone into after the close of the whole case."

The extract set out above from the judgment of Tindal, C.J., with regard to the general rule as to rebutting evidence was cited and adopted with approval by Avory, J., in giving the judgment in *Harris's* case, where he says: "That rule applies only to a witness called by the Crown and on behalf of the Crown, but we think that the rule should also apply to a case where a witness is called in a criminal trial by the judge after the case for the defence is closed, and that the practice should be limited to a case where a matter arises *ex improviso*, which no human ingenuity can foresee, on the part of a prisoner, otherwise injustice would ensue—In the circumstances, without laying down that in no case can an additional witness be called by the judge at the close of the trial after the case for the defence has been closed, we are of opinion that in this particular case the course that was adopted was irregular, and was calculated to do injustice to the appellant Harris."

The principle of this case has been applied in several cases recently, and convictions were quashed by reason of the calling by the judge of a witness in circumstances which did not give effect to the two conditions laid down by this judgment. Thus, in *R.* v. *Liddle* [1928] 21 Cr. App. R. 3, where a defence of alibi was set up, it was held that there was nothing *ex improviso* about such a defence as to justify the judge calling certain witnesses after an adjournment and after counsel for the defence had addressed the jury, in order to prove that the witness called to establish an alibi had committed perjury, Avory, J., saying that an alibi ought always to be foreseen. There Lord Hewart, C.J., says: "In the circumstances it appears to us that neither of the conditions laid down in the case of Harris were fulfilled. Nothing had suddenly emerged which required the calling of witnesses, and the circumstances in which the witnesses were called were such as gravely to imperil the defence and to put the defence to an unfair disadvantage." In *R.* v. *McMahon* [1933] 24 Cr. App. R. 95, a conviction was quashed for publishing a defamatory libel where the Recorder had called, after the defence was closed, six witnesses, including the two persons alleged to have been libelled, and to have put questions which the court held might have suggested to the jury that the issue was whether the words complained of were true. Again, in *R.* v. *Day* [1940] 29 Cr. App. R. 168, a case of forgery of a cheque, the prosecution, after they had closed their case, and after also evidence for the defence had been heard, were given leave by the judge to call after an adjournment a handwriting expert to prove the handwriting on certain cheques alleged to be in the handwriting of the prisoner by comparing it with handwriting admittedly of the prisoner's on two letter-cards which had been in the possession of the prosecution since the beginning of the proceedings. It was there held that it could not be said that the evidence of the handwriting expert was evidence on any matter which arose *ex improviso*, nor could it be said that it was evidence the necessity for which no human ingenuity could foresee, and that the additional evidence probably destroyed a defence which would otherwise have succeeded, Hilbery, J., saying that it would have been open to counsel for the defence to ask for a

further adjournment so that he might have an opportunity of consulting and perhaps of calling a handwriting expert, and that the eventuality of experts differing was not unheard of, " and so the inquiry might wander on indefinitely." Finally, in *R.* v. *Browne* [1943] 29 Cr. App. R. 106, where the judge on his own responsibility at the instance of the jury after the summing-up and retirement of the jury called the prison doctor to give evidence to contradict suggestions which had been made on the part of the appellant that he was suffering from loss of memory, on this ground, and also on the ground of an inadequate summing-up, a conviction for obtaining money by false pretences was quashed.

Where a witness has been called by the judge, however, it was held in *Coulson* v. *Disborough* [1894] 2 Q.B. 316, a civil action where after counsel for both parties had spoken at the conclusion of the case a witness was called by the judge at the request of the jury who asked him certain questions the answers to which were wholly immaterial to the issues in the case, that there was no right in the counsel for the plaintiff to cross-examine. In his judgment, Lord Esher, M.R., says : " When a witness is called in this way by the judge, the counsel of neither party has a right to cross-examine him without the permission of the judge. The judge must exercise his discretion whether he will allow the witness to be cross-examined. If what the witness has said in answer to the questions put to him by the judge is adverse to either of the parties, the judge would no doubt allow, and he ought to allow, that party's counsel to cross-examine the witness upon his answers. A general fishing cross-examination ought not to be permitted." (See this case commented on in the case of *Enoch and Zaretsky, Bock & Co.* above.) Although this case is concerned with a civil action, it is conceived that the principle also applies to the case where a witness is called in a criminal trial by the judge. It may be noted that in *R.* v. *Cliburn* (1898) 62 J.P. 232, where, after the close of the prosecution's case and counsel for the defence having stated that he did not propose to call any witnesses, the Common Sergeant called a witness in the interest of justice because he had not been called either by the prosecution or by the defence he held that counsel for the prosecution had the right to put questions to the witness, and he stated that, after consultation with the judge, Grantham, J., and the Recorder, they had both agreed with his view, although the judge thought that the questions should be put through him (the Common Sergeant), while the Recorder thought that they should be put through counsel for the prosecution, which was the view of the Common Sergeant, and he allowed counsel to put certain questions to the witness on matter affecting the prisoner.

RECALLING A WITNESS

In conclusion it may be observed that, as regards the power of a judge to recall a witness, it was held in *R.* v. *Sullivan* [1923] 1 K.B. 47 that this power stands on much the same footing as the power of allowing rebutting evidence to be called, that is to say, that the judge has a discretionary power with which the Court of Criminal Appeal cannot interfere unless it should appear that a real injustice has resulted. The court, however, pointed out that, if the witnesses were recalled merely for the purpose of restating that which they had already sworn to in their examination in chief, they would have been bound to hold that this was an irregularity. There the judge recalled certain witnesses after the prisoner had given evidence, and certain other witnesses even after counsel for the defence has made his speech to the jury. It was held in *R.* v. *Seigley* [1911] 6 Cr. App. R. 106 that, where a prisoner has given evidence, he is liable, like any other witness, to be recalled by the prosecution for the purpose of answering such questions as the judge permits to be put to him. It would appear also that in such a case a prisoner is liable to be recalled by the judge.

Where, however, a witness for the prosecution has been recalled by the judge, the prisoner's counsel is entitled to have the opportunity of cross-examining the witness again : *R.* v. *Watson* (1834) 6 C. & P. 653, and in *R.* v. *Howarth* (1918) W.N. 59, where a witness was recalled by the judge at the request of the jury but the prisoner was not allowed to cross-examine on the new matter so given in evidence, the conviction was quashed, the court stating that where the witness was recalled to give evidence on some entirely new matter the fact that the questions were put by the presiding judge did not take away the prisoner's right to cross-examine on that new evidence or to give further evidence in rebuttal if he thought fit to do so. It was also stated that the practice not to allow any further questions to be asked in such a case by or on behalf of the prisoner only applied where the witness was recalled for the purpose of clearing up some point in a matter which had been fully gone into in evidence, such as a doubt as to what the witness had said.

M.H.L.

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Harold William Parkhouse, Landfall, Chilworth, Southampton.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL
(Before Lord Goddard, C.J., Hilbery and Barry, JJ.)

R. v. HALL
December 10, 1951

Criminal Law—Procedure—Separate trials—Evidence relating to one count admissible on others—Gross indecency—Similar acts committed in similar circumstances.

APPEAL against conviction.

The appellant was convicted at the Central Criminal Court before LYNSKEY, J., on an indictment containing ten counts, all of which charged him with gross indecency with male persons. Three young men—B, C, and R—were involved. An application was made to LYNSKEY, J., to order separate trials, but the judge ordered that the counts should be tried together, giving as his reason that all the evidence to be called on all the counts could have been called on any one of the counts. It appeared that the appellant's defence with regard to B and C was that the acts alleged to be indecent were done by him to them in the course of medical treatment, and with regard to R that he had never met him. The appellant was not a medical man, but was a member of a society concerned with the study of the occult. It was not disputed that he had met B and C at this society, and each of them said that he had made indecent suggestions to them and had supplied them with a particular ointment and then committed the acts alleged. R said that he had met the appellant after the appellant had been giving a scientific or pseudo-scientific lecture, that the appellant had talked indecently to him, and had handed him a box of the same kind of ointment before committing the acts alleged.

Held, modifying a passage in the judgment in *R. v. Sims* ([1946] 1 All E.R. 697), that the justification of evidence of the kind in question was that it tended to rebut a defence otherwise open to, *i.e.*, intended to be set up by, the prisoner; that, as soon as it became clear that the defence was either (*a*) accident, or (*b*) mistake, or (*c*) that the facts alleged by the prosecution had an innocent and not a guilty complexion, such evidence could be given, and it was not the less admissible because it showed, or tended to show, that the prisoner had been guilty of another offence. The evidence relating to B was, therefore, admissible on any charge relating to C, and *vice versa*, to rebut the defence of innocent handling in the course of medical treatment which it was clear the appellant intended to set up, and on any charge relating to R the evidence relating to B and C became admissible, and *vice versa*, because it went to indentity within the meaning of *Thompson v. Director of Public Prosecutions* (82 J.P. 145). The judge had, therefore, properly exercised his discretion in deciding that all the counts should be tried together, and the appeal must be dismissed.

Counsel: *E. V. Falk* for the appellant; *R. E. Seaton* for the Crown.

Solicitors: *Pollard, Stallabrass & George Martin; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter, Esq., Barrister-at-Law.)

R. v. BURROWS
December 11, 1951

Criminal Law—Gross indecency—Invitation by prisoner to boy to handle him indecently—Criminal Law Amendment Act, 1885 (*48 and 49 Vict.*, c. 69), s. 11.

APPEAL against conviction.

The appellant was convicted at Ipswich Borough Quarter Sessions of indecent assault on a boy. The evidence of the boy was that the appellant exposed himself and asked the boy to masturbate him. The boy also said that the appellant made an attempt to touch his (the boy's) private parts. The recorder directed the jury that the question for them was whether the appellant had done either of the things which the boy alleged.

Held, that the direction was wrong in law, as, following the decision of the Divisional Court in *Fairclough v. Whipp* (115 J.P. 612; [1951] 2 All E.R. 834), the former act could not amount to an indecent assault, because there had been no threat or hostile act by the appellant towards the boy, and, therefore, no assault, and that on that ground the conviction must be quashed. The proper charge would have been that of procuring an act of gross indecency with the appellant himself, contrary to s. 11 of the Criminal Law Amendment Act, 1885, and such a charge ought to be preferred in similar circumstances.

Counsel: *W. H. Hughes* for the appellant; *Jellinek* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Gotelee & Goldsmith*, Ipswich.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

REVIEWS

The Juryman's Handbook. By Alec Brown. London: The Harvill Press. Price 10s. 6d. net.

At first sight, one might easily question the value of a handbook for jurymen, since so many people go through life without serving on a jury and so many others serve very rarely. Few, it may be said, would trouble to read a handbook in preparation for service.

Mr. Brown's book is much more than a mere guide to jury service. It certainly provides wise guidance, but its greatest value lies in its presentation of the jury system, and all that it means, to the general reader. His enthusiasm for what he believes to be one of our greatest contributions to civilization and one of the surest defence against tyranny, together with the simplicity and clearness of his exposition, make this a fascinating book.

The history of the jury system and the changes it has undergone is explained and brought up-to-date. The juryman is told what is likely to happen to him from the moment he receives his summons until he has delivered his verdict, and he is told precisely what is his function in a trial by court and jury. There are some wise and sometimes amusing reflections on ushers, foremen of juries, on the unreliability of much testimony, with a little instruction upon certain aspects of the law of evidence which so often puzzles the newcomer. The whole picture is well and truly drawn, and the effect, as it is the intention, is to produce the conviction that service on a jury, though it may involve inconvenience and sacrifice is one of the most valuable and important duties that the citizen can perform, and that trial by jury is the fairest method of determining whether or not a crime has been proved against the accused.

Most people feel very strange upon first entering a court in the capacity of juryman. Recognizing this, Mr. Brown observes, "As juror, you will learn much from your first case of guilty." Indeed one cannot help wondering why it is not the practice for jurors to be required to be present in court, at two or three cases before themselves ever sitting on a jury. There is much to commend this suggestion, but probably many jurymen, anxious to be away from their own affairs for as short a time as possible, would chafe at being kept waiting—especially if they had not read Mr. Brown's book and thus gained a clear perception of the importance of their part in the administration of justice.

Justices' Duties Out of Court. Published by the North East Branch of the Magistrates' Association and obtainable from Mr. Cecil H. Geeson, Honorary Secretary, City Magistrates' Courts, Newcastle-upon-Tyne. Price 1s. (or in red cloth 2s.) post free.

Newly appointed justices have sometimes expressed their concern at being called upon to perform some duty, perhaps in connexion with the removal of a person of unsound mind, at a time when they have no opportunity of consulting their clerk. They are entitled to sympathy, but this tiny handbook which can be carried in a waistcoat pocket gives practical guidance in simple language. As it has been prepared by the Durham and Northumberland Justices' Clerks' Society, there can be no doubt about its excellence. Principally concerned with lunacy and mental deficiency it deals also with such matters as the taking of declarations and the witnessing of signatures, matters which require more care and attention than they sometimes receive.

We cordially recommend this most useful booklet.

"Special Reasons." By W. E. Blake Carn. London: Shaw & Sons, Ltd. Price 6s., postage extra.

It is by no means easy for justices to decide, in exceptional circumstances, when they may be justified in finding "special reasons" for not disqualifying a defendant convicted under certain provisions of the Road Traffic Acts. Fortunately, the High Court has dealt with a number of such cases, and certain principles have been laid down. In this little book, Mr. Blake Carn, who is a solicitor and the clerk to the justices for the City of Leicester, has collected nearly a score of cases, stated the facts of each briefly and given extracts from judgments

sufficient to indicate the reasons for the decision. Practitioners will find it useful to take with them into court when it is not convenient to be burdened with volumes of reports. There is enough material here upon which to base arguments and make submissions.

The Baily Family of Thatcham. By L. G. H. Horton-Smith. W. Thornley & Son, Leicester, 1951. Copies obtainable at £2 3s. 6d., including postage from the Author, 26, Riverscourt Road, Ravenscourt Park, London, W.6.

This is a remarkably handsome production, much of it printed on one side only of each sheet, on good quality paper, the other side being available for notes. Several pages are taken up by the pedigree from 1701 to the present day, of the family dealt with, described as of Thatcham, Speen and Newbury, with several collateral connexions. A publication of this sort is inevitably of greatest interest to members of the family concerned (the author's mother had been a Miss Baily): it can hardly possess an equally strong appeal for others, but it may be expected to find a home in some of the more serious libraries. For the general reader it would be impossible to do more than dip into a book of this sort here and there, although every reader must admire the immense industry of the learned author, carrying into the genealogical sphere the qualities for which, among our own readers, he is already known, in relation primarily to the law of landlord and tenant. From the author's portrait as a frontispiece, inserted by special request of his Baily relatives, to the list of his other genealogical and antiquarian works covering several pages at the end, the book is packed with information: within the Baily family (of which nine generations are set out) there will obviously be more interest than elsewhere in some of this information—such as the paragraphs explaining the learned author's attitude to prayer-book revision; his gifts to various libraries; the publications, medical and scientific, of other members of the Baily clan; and the fact that a Miss Birkett (reckoned in the eighth generation of the pedigree) was employed for fifteen years at the Bank of England.

Apart from such *minutiae* of family history, the curious links disclosed between these Berkshire Bailys and various families known in history (like Lenthall, Dymock, and Lumley) are interesting and there are curious sidelights upon history—as in the account of a house at Newbury connected with the family, where Lord Falkland slept before the battle, and in the achievements of Francis Baily, the astronomer. Other people's wills, marriages, and business concerns may be interesting if picked out here and there; there is in this volume plenty to show even the casual reader how a typical middle class provincial family developed, and spread in the period of two and a half centuries covered by the work. Another curious phenomenon incidentally appears, which has not yet been fully studied, with regard to its effects on social and intellectual development in England. This is the tendency of the educated middle class in England, from the eighteenth to the early twentieth century, to adhere to the Unitarian community. To persons outside that community the best known instances are, probably, the great Nettlefold—Beale—Kenrick congeries of Midland families, and the Pritchard-Parker congeries in North London, but many of the older country towns had their Unitarian meeting houses (Newbury was a good example) supported generation after generation by a group of families leading the commercial and professional life of their own neighbourhoods, and exercising an influence upon the country's intellectual life which has been incalculable. The Baily family were well in this tradition, adhering to the local meeting house, and even today after removal to London, to the better known Essex Church and Rosslyn Hill Chapel, and intermarrying with Unitarian families like that of Drummond and Brooke Herford.

The present work is also instructive to the student in showing at once the variety of sources to which the serious genealogist may have to turn (at p. 53 the author is found spending great trouble and some money, seeking the birthplace and family of one Hannah Dibley born in 1740, who married John Baily at Thatcham in 1771), as well as the rather chancy identifications which here and there have to be accepted after all—as when even so learned an antiquary as Mr. Horton-Smith cannot be sure whether A was the son or grandson of B, or whether CD who lived in one place was the same CD who lived somewhere near a few years later. Genealogy is not even now, for all our modern registration systems, an exact science; it is even less so for the eighteenth and early nineteenth centuries, but Mr. Horton-Smith has succeeded in showing how near to exactitude it can attain, given such endless assiduity as he happily possesses.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PROPERTY OF THE CASUALLY DEAD

With reference to your notes on p. 757, the writer has had several experiences of this character. Just over two years ago, a Czechoslovak employed as a miner and living at a local miners' hostel was killed by an omnibus whilst cycling to work. He had no relatives in this country but among his possessions was a valuable gold watch and ultimately it was found that he had over £200 in the Post Office Savings Bank.

The local miners' lodge wanted the writer to take possession of this property, but I refused to do so for the reason that in my capacity as clerk of the council, I had no authority so to act. As a result I was criticized for heartlessness for it was said that this man's widow was living in very poor circumstances in Czechoslovakia. It might have been possible for me to have extracted letters of administration to the estate but I saw no reason why I should undertake these duties. However, in this case I was successful in getting the Public Trustee to act.

As a result of this particular case, I raised the matter before the South Wales branch of the Society of Clerks of U.D.C.'s and they were good enough to confirm the opinions which I had expressed but at the same time, they suggested I should obtain counsel's opinion on the matter.

This I did through the medium of the Urban District Councils Association and I enclose herewith copy of the case and opinion, in the hope that it will be of interest to you. All the points raised in your article were dealt with at our meeting and we had a most interesting discussion. I hope this interests you.

Yours faithfully,
LEON KING,
Clerk.

Abercarn U.D.C.,
Council Offices,
Abercarn, Mon.

[We are obliged to our correspondent, and pleased to note that counsel's opinion agrees with that which we expressed. Clearly a public officer might find himself in an awkward position if he intermeddled with a deceased person's property, beyond the stage of looking after any interest his authority had therein.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PERMITTED SELLING PRICE AS LOCAL LAND CHARGES

I have noted on p. 751 the letter from the Clerk of the Solihull U.D.C. and your editorial comment. May I draw your attention to s. 15 of the Land Charges Act, 1925, which expressly stipulates that a local land charge shall be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby, unless registered in the appropriate register before completion of the purchase. Coupled with that stipulation is para. 13 (2) of the Local Land Charges Rules, 1934, which lays down that where the local land charge other than a general charge has become unenforceable, the registration shall thereupon be cancelled. How, in view of these provisions can a registrar resist cancelling the local land charge in any case where it was not registered at the time when a purchaser acquired for money or money's worth the legal estate in the land? To argue otherwise would be to prejudice that purchaser if he had subsequently to part with his estate at a lower figure because of a charge enforceable against his purchaser.

Yours faithfully,
FRANCIS J. O'DOWD,
Town Clerk.

Town Hall,
Chingford, E.4.

[The last sentence of this letter makes a point which we made, on the merits, in our article at p. 681, *ante*. The preceding sentence (beginning "How") gives a view of the law which, as will there be seen, attracted us at first but which we rejected after examination of the provisions mentioned in the letter. Stated shortly, this point is that a charge is not bad as against the world, and particularly as against C, because it is unenforceable against B.—*Ed., J.P. and L.G.R.*]

MISCELLANEOUS INFORMATION

THE LOCAL GOVERNMENT LEGAL SOCIETY

The annual meeting of the Local Government Legal Society was held on Saturday, November 3, at the Holborn Town Hall. The morning session of the meeting was addressed by Mr. Desmond Heap, LL.M., LM.T.P.I., Comptroller and City Solicitor of the Corporation of London. A luncheon at the Holborn Restaurant followed at which the principal guests were the Mayor of Holborn, Mr. Desmond Heap, Sir Bernard Blatch, Mr. J. Brock Allon and Mr. G. H. Banwell. The business for the annual general meeting was conducted during the afternoon.

Mr. Heap spoke on "The City of London, its Government and some Problems of its Replanning." He referred to the remote origins of the Corporation of London, pointing out that the constitution of the City was unique amongst municipalities and the result of centuries of evolution and development. The City had no charter of incorporation, being a corporation by prescription, although numerous charters had, from time to time, been granted to the City by Kings of England, the earliest one being that granted by the Conqueror about 1068. This charter did not, however, incorporate the City but ratified the rights and privileges which the citizens of London already held. The charter is still preserved in the corporation's archives.

In 1191 King John acknowledged the right of the citizens to combine in a sworn association, thereby recognizing the citizens of London as a corporation bound together by a corporate oath. Magna Carta in 1215 reaffirmed the rights and customs of the City of London whose mayor was amongst those appointed to see that the terms of the charter were carried out. Finally, the Act of II William and Mary, c. 8, 1690, gave statutory recognition of the Mayor and Commonalty and Citizens of London as a body corporate.

The title "Lord Mayor" is evolutionary and in official papers the head of the corporation is still referred to as "Mayor." The Mayoralty dates from 1192 and Mr. Heap mentioned that in the long line of those who had filled this office the famous name of "Richard Whytyngdone" appeared four times and not merely three as is popularly supposed. The Lord Mayor is annually elected on Michaelmas Day and the Lord Mayor Elect must be presented for the Sovereign's approval in accordance with the charter of 1202. The Sovereign's pleasure is now signified by the Lord Chancellor in a short, but formal, ceremony at the House of Lords. A new Lord Mayor is admitted to office at a public and again, formal ceremony at Guildhall on November 8 when the various officers of the corporation hand what, briefly, may be termed their seals of office to the outgoing Lord Mayor and receive them back again from the incoming Lord Mayor, who, on the following day, November 9, makes his declaration of office at the Royal Courts of Justice before the Lord Chief Justice of England as required by s. 223 of the Supreme Court of Judicature Act, 1925.

In addition to presiding over the Court of Aldermen and the Court of Common Council the Lord Mayor is the Chief Magistrate in the City and is accordingly the first justice named in the Commission of the Central Criminal Court.

Mr. Heap said that the Corporation discharges its functions through three assemblies: the Court of Aldermen, the Court of Common Council and Common Hall.

The Court of Common Council had unbroken continuity from about 1380 and the Court of Aldermen, which was the principal governing body from the thirteenth to the seventeenth centuries an even longer history. For the past two centuries it was the Court of Common Council which had been the main governing body and modern statutes, conferring powers on the corporation, now vested them in the Common Council. The Common Council is a legislative as well as a deliberative assembly and, under charters of Edward III and Richard II, can reform its own constitution by passing an Act of Common Council. All members of the Common Council are subject to annual election on St. Thomas's Day, December 21.

The speaker then dealt with the different officers of the corporation and outlined their respective duties.

Turning to the work of the corporation, Mr. Heap said it was one of the unique features of the corporation that it functioned in three separate and distinct capacities, namely, as an ancient municipality drawing its moneys, called City's cash, from the private estates of the corporation; as trustees of the Bridge House Estate; and as a modern local government authority exercising the functions normally conferred upon local authorities by statute and raising a rate to produce the funds necessary for so doing. The City's cash services of the corporation included the provision and maintenance of open spaces (*e.g.*, Burnham Beeches and the nine square miles comprising Epping Forest); the provision of education through the City of London School and the Guildhall School of Music and Drama and other schools; the provision of markets, such as Billingsgate, Smithfield and Leadenhall; the maintenance of the Mansion House and the Old Bailey; and the provision of civic hospitality on the occasion of visits to Guildhall of Royalty and distinguished visitors from overseas.

The Bridge House Estate was a trust estate of which the speaker was now the Comptroller, the first Comptroller having been appointed in 1311. It was the trust moneys accruing from this Estate which had built and maintained the four City bridges, namely, London Bridge, Blackfriars, Southwark and Tower Bridge.

As a modern local authority, the corporation, like other local authorities, supplied a number of services supported by rates moneys and these included the City of London Police, responsibility as health authority for the whole of the Port of London, and matters of housing and town planning. [The Corporation was not a local planning authority under the Town and Country Planning Act, 1947, but functioned as a local authority under that Act under a wide measure of delegation from the London County Council under the *ad hoc* provisions of the Town and Country Planning Delegation (London) Regulations, 1948, and the Town and Country Planning (City of London Applications) Direction, 1948.]

One of the tasks with which the speaker had been particularly concerned was the making of a declaratory order covering approximately one-third of the City and made under the Town and Country Planning Act, 1944, together with the making of a number of compulsory purchase orders dependent thereon. Redevelopment of the devastated areas of the City was an urgent necessity and although things appeared to move slowly it would be found on closer investigation that they were proceeding at a quicker rate than was sometimes thought. It was not so much the planning Acts and the development plans which impeded progress as the general stringencies of the times.

During the course of the afternoon meeting the following officers were elected for the year 1952:

Chairman of the Society: Mr. F. Scott-Miller, London County Council (Room 266 (B)), County Hall, London, S.E.1. Vice-Chairman: Mr. S. Holmes, Municipal Offices, Dale Street, Liverpool. Honorary Secretary: Mr. J. D. Schooling, Worcestershire County Council, Shire Hall, Worcester. Honorary Treasurer: Mr. E. Thomas, Town Hall, Reading.

CROSSWORD SOLUTION

The correct solution to the Crossword at p. 815, *ante*, is as follows:

I	N	C	U	S	T	O	D	I	A	L	E	G	I	S
N			P		O		E		C		N			I
F		L	O	C	U	S	S	T	A	N	D	I		M
O	P	E	N		R		K		R		S	N	A	P
R		G		E	N	D	S	H	I	P		T		L
M	A	I	M	S		E		A		L	I	E	G	E
A		S		C	A	M	O	R	R	A		R		I
P	I	L	C	H		E		P		I	M	P	E	N
A		A		E	S	S	O	I	G	N		A		T
U	L	T	R	A		N		E		T	E	R	C	E
P		O		T	H	E	I	S	T	S		T		R
E	R	R	S		U		N		A		C	E	D	E
R		S	C	I	R	E	F	A	C	I	A	S		S
I			O		S		E		I		S			T
S	T	A	T	U	T	O	R	Y	T	R	U	S	T	S

Compiled by J. A. CAESAR, Deputy Town Clerk, Rochdale.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 88.

ANOTHER CASE UNDER SECTION 15 ROAD TRAFFIC ACT, 1930.

At Oldbury Magistrates' Court on November 30, 1951, two men appeared to answer charges laid under the Road Traffic Act, 1930. M was charged under s. 15 with being in charge of a motor vehicle on a road when under the influence of drink, and he was further charged under s. 35 of the Act with permitting B to drive the car knowing that the latter did not hold an insurance policy against third party risks. B was charged with dangerous driving contrary to s. 11 of the Act, with having no insurance relating to third party risks, contrary to s. 35 of the Act, and with failing to display " L " plates whilst the holder of a provisional licence.

For the prosecution, evidence was given that M hired a motor car, and with his friend B and another man and a woman companion went out to a public house, where the party consumed drinks during the course of the evening. On leaving the public house, M, who had driven the car earlier in the evening, felt ill and requested B to drive. B did so, and drove the car in a very dangerous manner, zig-zagging from one side of the road to the other. There was no suggestion that B was under the influence of drink to such an extent as to be unable to drive the car. The car was stopped by a police officer, and the charges detailed above were later preferred.

The prosecution drew attention to the fact that s. 15 creates three distinct offences, *viz.* : driving whilst under the influence, attempting to drive whilst under the influence and being in charge whilst under the influence, and sought to establish that two persons could be in charge of a motor vehicle at the same time—that though one might be driving another could be directing the course which the car was to take and if the latter was unfit to drive by virtue of being under the influence of drink or drugs, a conviction under s. 15 should follow.

Counsel for the defendant M contended that it would lead to great injustices if M were held to be in charge in such circumstances. He alleged that M had surrendered his authority in the car to B and had no part in the direction of the vehicle. He further contended that being " in charge " under the section referred to the case of the lorry or car left in the road with the driver inside but not driving or attempting to drive—in similar circumstances to those outlined in *Duck* v. *Peacock* (1949) 113 J.P. 135. He further submitted that there could not be two persons in charge of a motor vehicle; only one person was ever in charge of a motor vehicle and that was the driver at the wheel. That he at all times had control of the vehicle and that it would be opening a wide door to say that there could be more than one person in charge of a motor vehicle.

The court did not accept the contention of the prosecution and dismissed the charge under s. 15, holding that M was not in charge of the car within the meaning of the section and the chairman added that the court found that he was incapable of having proper control. M was convicted of the charge under s. 35 and was fined £20 and disqualified from driving for five years. B was fined £10 and disqualified from driving for two years upon the charge of dangerous driving ; £5 for the offence under s. 35 and £1 for having no " L " plates. In addition he was ordered to pay £1 costs.

COMMENT

It will be recalled that *Duck* v. *Peacock*, *supra*, was a case in which a motorist, who had consumed a quantity of intoxicating liquor, entered and drove away his car, being at the time (according to the finding of a metropolitan magistrate) fit to drive. A few minutes later he felt dizzy, stopped his car and fell asleep. He was convicted by the learned magistrate under s. 15 of being in charge of the car when under the influence of drink, but disqualification was not ordered on the ground that the fact that he stopped as soon as he realized that he was no longer fit to drive was a " special reason " within s. 15 (2) for not disqualifying him.

The Divisional Court pointed out that it would enable offenders to avoid the consequences of their misdeeds if it was to be held that merely by stopping and going to sleep in the car constituted a " special reason " sufficient to enable disqualification to be avoided, and remitted the case to the learned magistrate with an intimation that the offender must be disqualified for the statutory period.

Mr. J. E. Larkam, clerk to the Oldbury Justices, to whom the writer is much indebted for this report, mentions that during the course of the hearing the attention of the court was drawn to an article which appeared at 114 J.P.N. 751 and to an article at p. 606 (Vol. C) of *The Law Journal* for November 3, 1950 and he echoes the earnest hope which the writer expressed at the conclusion of an article entitled " In charge of a motor vehicle. Another decision " which appeared at p. 489, *ante*, that guidance will soon be forthcoming from the High Court as to the true meaning of the words " in charge."

Whilst preparing this article, the writer has noticed that in the daily press appears a report of a case which was before Mr. Rowland Thomas, K.C., the Metropolitan magistrate sitting at Marlborough Street on December 11, in which a man and a woman were committed for trial at London Sessions each accused of being in charge of the same car whilst under the influence of drink. The learned magistrate overruled a submission by the defence that two persons could not be in charge of the same car at the same time. The writer will report in due course the result of the trial at quarter sessions.

No. 89.

IMPROPER LIGHT ON VEHICLE

A motorist was charged before the Banbury and Bloxham justices early this month with unlawfully causing a motor car on a certain road to carry a light other than a red light, namely a white light, to the rear, contrary to ss. 2 and 10 of the Road Transport Lighting Act, 1927. The defendant did not appear and was not represented.

Evidence was given by the driver of a car which was following the defendant's car during the hours of darkness that a white light shining in his direction suddenly appeared from the direction of the defendant's car. At first the witness did not know where the light came from and he swerved to his left and braked ; he then realized that it was a lamp on the back of the defendant's car and was thereafter not so much troubled by it. The light was switched off again after a short distance but was later switched on and off twice more. The witness was driving with side-lights and dimmed headlights.

Some days later the police interviewed the defendant who said he remembered the occurrence. He made a statement to the effect that he was dazzled by the reflection in his mirror of the lights of the following car and switched his light on as a signal to the following car that he was being so dazzled. He added that owing to an eye injury received during the war he had to avoid bright lights.

The police inspected the car and found it was fitted at the rear with a spotlight such as is sometimes fitted to the front of a car. The glass, which was colourless, was 6¼ *inches* in diameter and the lamp was fitted with a twenty-four watt bulb and was controlled by a switch inside the car.

The Bench were of opinion that this was a deliberate infringement of s. 2, and imposed a fine of £5, and ordered defendant to pay £2 5*s*. costs.

A question was afterwards put to the police by the Bench with regard to the reversing light which is found as a standard fitting on some cars. The superintendent replied that strictly it is illegal, but that it is not normally in use for more than a few seconds and that the police are reasonable beings !

COMMENT

This case attracted considerable interest when it was reported recently in the national press, but Mr. Charles Huntriss, clerk to the Banbury and Bloxham justices, to whom the writer is much indebted for this report, points out that there was omitted from the reports in the national press any reference to the size of the lamp forming the subject of the charge.

Many law abiding motorists whose cars are fitted with the standard form of reversing light read the report with anxiety but it is submitted that a colourless rear lamp the size of a spotlight is almost unknown and there is little reason to suppose that the police will institute a drive against the normal form of reversing light which has very definite uses.

Section 2 of the Act prohibits a vehicle carrying any light other than a red light to the rear, but excepts from the prohibition lamps carried for the purpose of internal illumination or illuminating a number plate. Section 10 provides for a maximum penalty of £5 in the event of a first offence and £20 for a second or subsequent offence.

NOTICES

The next court of quarter sessions for the borough of Grantham previously fixed for December 19, has been postponed until January 3, 1952.

The next court of quarter sessions for the Isle of Ely will be held at Wisbech on January 2, 1952.

The next court of quarter sessions for the borough of Guildford will be held at the Guildhall on January 5, 1952, at 11 *a.m.*

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Monday, January 14, 1952.

THE PASSING YEAR

The astronomical fact that the solar year consists of 365 days, five hours, forty-eight minutes and forty-six seconds is unlikely to interfere with the approaching popular celebration of the passing of A.D. 1951 at midnight on December 31. It may even be doubted whether more than a minute proportion of the crowds that will throng the centres of our cities at that hour, to welcome the advent of the leap-year 1952, will have in mind the Gregorian Rule of Intercalation, as amended by later reformers of the calendar. That Rule (as amended) provides that every year the number of which is divisible by four is a leap-year, except the last year of each century, which is a leap-year only when the number of the century is itself divisible by four; though the year 4,000 and its multiples (8,000, 12,000 and so on) are common years. This piece of information is proffered for its academic interest only, and it is not suggested that grave practical inconvenience is likely to result from neglect to note in one's diary that in the years 2,000 and 3,096 February will have twenty-nine days, but only twenty-eight days in the years 3000 and 4000 A.D.

The mystery of time has fascinated mankind from the earliest ages, and the problems of chronology have usually been left for solution to the esoteric learning of the priests. The question was perhaps over-simplified by the Jewish scholars of the ninth century A.D. who asserted with naive precision that the Creation of the World took place on the night of Sunday, October 7, in the year 3761 B.C. at 11.11 and twenty seconds *p.m.*, though the calculations that led to this surprising result were extremely elaborate. The Greeks of historical times based their chronology on the date of the first quadrennial celebration of the Olympic Games, in 776 B.C., while the Romans counted years from the founding of Rome in 753. The Ancient Egyptians seem to have employed a more picturesque though less convenient method, dating their year from such outstanding events as "the year of the first smiting of the East"; while the Chinese adopted the awkward custom of commencing a fresh era with the start of a new dynasty or even the accession of a new emperor. At the other end of the scale the profound learning of the ancient Indian astronomers led them to the startling conclusion that cosmic chronology ought to be based upon the period which will elapse before the sun, the moon and the planets return to the state of conjunction from which they first started—the "Great Age" of 4,320,000 sidereal solar years; and some of these learned men even wrote of the *Kalpa* or aeon, consisting of 1008 "Great Ages." Imagination must in former times have boggled at these gigantic conceptions; today we have been trained to think of the life of the universe in terms of millions of years by virtue of the researches of the geologists, the mathematicians and the astronomers. The Theory of Relativity is still beyond the grasp of all but the few initiated; but serious thinkers are beginning to conceive of the "space-time continuum" of which Einstein has written; time does not, so to speak, come to meet us as it "passes," but it is we who travel through it. The brilliant imagination of H. G. Wells gave us a glimpse into the idea in the form of a romance—*The Time Machine*—years before Einstein startled the world with his writings.

To return from these esoteric questions to more mundane matters, it is interesting to recall that, two hundred years ago, the reform of the calendar was a political question of the first importance. The New Style introduced by Pope Gregory XIII in 1582 had long since been adopted by most of the countries of Europe; Great Britain, with her usual insularity, had sturdily resisted the innovation and adhered to the Old Style Julian Calendar. It was not until 1750 that the Calendar (New Style) Act was passed by Parliament to bring British Chronology into line with that of other States; by that enactment the commencement of the legal year was changed from March 25 to January 1; hence the anomaly by which the last four months of the year bear names implying that they are respectively the seventh, eighth, ninth and tenth months. At the same time the discrepancy in date (which by then amounted to eleven days) was removed by the further provision that the day following September 2, 1752, was to be accounted the 14th of that month.

Those were the times when the bold, new scientific ideas of the French Encyclopaedists—the writings of men like Diderot, Voltaire, d'Alembert and Rousseau—were sweeping from France across Europe; fearless and sceptical thinkers everywhere were questioning the dogmas of philosophy, literature, religion and law. Revolution was seething beneath the surface and was shortly to burst forth in the American Colonies and in France. In this inflammable atmosphere the Reform of the Calendar appeared to the orthodox a new outrage upon tradition and established institutions. The ignorant were assailed by a muddle-headed idea that their lives were somehow being shortened by the deletion of a week and a half from the calendar; and riotous mobs paraded London streets crying "Give us back our eleven days!" The Government, however, stood firm, and the Gregorian Calendar has remained with us to this day.

Old ideas die hard, and one of them is the belief that chronological progression is synonymous with social progress. There is a tolerably widespread delusion, in the western world, that popular newspapers, television, football pools and speed-records in themselves constitute advances in civilization. The philosopher knows better; judging the possibilities of the future by the facts of the past, he realizes not only that there is no millenium just round the corner but that, on the contrary, the human race may, if present tendencies persist, be well on the way to following the mastodon and the brontosaurus into extinction. Lest this Jeremiad shock the conventionally-minded, let us hasten to add that the process may yet take another few thousand years or so; there is therefore no imminent necessity to anticipate the catastrophe by way of bank withdrawals, realization of securities, wholesale cessation of labour, or even concerted refusal to meet the demands of the Collector of Taxes early in the New Year. The ultimate implication of the ever-widening gap between material and moral progress is not an appropriate theme for these columns, and the writer can content himself with reflecting that, should he happily prove mistaken in his forecast, it is unlikely that any of his readers will be in a position to bring it up against him when the time comes.

A.L.P.

INNOVATION

Wouldn't it be rather a nice conception—
A Dissolution of Marriage Reception?
No doubt it'll soon be a matter of course
To invite guests to a Divorce.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Cinematograph entertainment—*Sunday performance in public house.*

A public house, licensed for music and dancing, wishes to show films on Sunday evenings in the bar. The bar is big enough and is suitable for the purpose. There seems grave objections on moral grounds and I am sure there is every likelihood there will be difficulty in maintaining proper order in a darkened public bar.

We are advising the brewers on these lines, but I would be grateful if you would let me know of any legal objection to such a proposal. Films used would be non-inflammable. NOX.

Answer.

We are not sure what type of legal objection our learned correspondents have in mind. We do not find any direct statutory provision to prevent the suggested entertainment. It would not be in breach of the Cinematograph Act, 1909, because the film is not inflammable, and it would not contravene the Sunday Observance Act, 1780, unless money was taken at the door or tickets issued for admission, or the prices of refreshments were enhanced (*see* ss. 1 and 2 of that Act). If the entertainment does contravene that Act, (*e.g.*, because prices are enhanced) s. 1 of the Sunday Entertainments Act, 1932, if in force in the district, could not be used to legitimate it, because obviously the premises will not have been licensed under the Cinematograph Act, 1909. The question seems, therefore, to be what the licence of the public house provides, or what the justices will agree to.

2.—Election—*Casual vacancy—Notice by two local government electors.*

Section 42 of the London Government Act, 1939, provides that, on a casual vacancy occurring in the office of county councillor or borough councillor, an election to fill the vacancy shall be held . . . "(*b*) in any other case, within thirty days after notice in writing of the vacancy has been given to the clerk of the authority by two local government electors for the county or borough."

Must the "notice in writing . . . by two local government electors" consist of a single document signed by two, or presumably more, local government electors, or may it consist of two (or more) separate notices each signed only by one local government elector? Section 67 of the Local Government Act, 1933, is in similar terms and so were sections dealing with the same point in various statutes since repealed.

Upon this question I can find no authority and opinion is divided. One view is that the section clearly contemplates a single notice signed by at least two local government electors—the wording is "notice in writing . . . by two," etc. and not "notices in writing . . . from two," etc., and the obvious intention is that the election machinery is not to be set in motion unless at least two electors act in concert by giving a joint notice—and appear, on the face of it, so to act by signing the same document. Why, if notice by one person should have been considered insufficient, so small a number as two should have been thought adequate I do not know, but there may have been some reason for this.

The opposing view is that two or more separate notices each signed by one local government elector are just as much "notice in writing . . . by two local government electors" as a single notice signed by two such persons, and satisfy the requirements of the section. But, once this argument is accepted, it seems to follow inevitably that there is no reason why the two notices should not be received at different times and that, consequently, once one notice is received, the requirements of the statute would be satisfied immediately upon receipt of a second notice from a second local government elector, however long afterwards—perhaps three or six months, or longer—and that the election would then have to be held "within thirty days after" the receipt of the second notice. This, surely, can hardly have been contemplated? AMDA.

Answer.

We agree that the last-mentioned course of events was not contemplated, in the extreme case put, *i.e.*, a vacancy notified by one elector, and subsisting for a long time (with nothing done about it) until a second elector also sends a notice. But it does not follow that the section producing this effect cannot be construed so as to allow separate notices. By the Interpretation Act, 1889, the singular includes the plural unless the contrary intention appears; moreover, the section does not say "a notice signed by two electors has been given." The indefinite article is absent. We find the arguments too balanced for certainty, but, as soon as a second notice comes along, we should be inclined to act on the view which leads to what Parliament presumably wished done, *i.e.*, filling the vacancy within thirty days of that second notice, rather than on the view which leaves the vacancy outstanding although in fact two electors have given written notice of it. Legal draftsmen (not the parliamentary draftsmen alone) have an unfortunate habit of using the passive voice. If the sentence is rewritten in the active voice, it runs "after two electors have given notice." The meaning is the same, but, put that way round, the sentence seems to us to convey more clearly the idea that the two electors can use two bits of paper.

3.—Evidence—*Husband against wife—Charge of forcible entry.*

A husband has laid informations against his wife and another person charging them with (i) forcible entry and (ii) detaining possession after forcible entry, both contrary to the Statute of Forcible Entry (5 Rich. 2 St. 1, c. 7), 1381.

The husband and wife are in fact living apart but they are not legally separated.

The husband wishes to give evidence against his wife.

The reference in *Archbold* thirty-first edn., 1943, pages 451 *et seq.*, dealing with the question of the competency of a husband or wife to give evidence for the prosecution against the other, refers to "a competent witness for the Crown."

You will, also, doubtless recollect the recent ruling on the prosecution for threats to murder a wife, where her evidence was held to be inadmissible: *R.* v. *Yeo* [1951] 1 All E.R. 864; 115 J.P. 264.

1. Is the husband competent to give evidence for the prosecution against his wife on the hearing of the above-mentioned informations before the examining magistrates?

2. Would the position be changed if the husband, in the course of the alleged forcible entry and subsequent detainer, did in fact suffer bodily injury through the actions of his wife or the person who accompanied her in the alleged commission of the offence?

3. Can a private citizen, giving evidence for the prosecution on informations laid by himself under the above mentioned statute, be said to be "witness for the Crown?"

4. Does your answer to (3) affect the position of the husband?

SILEX.

Answer.

The common law rule being still that the husband cannot be a witness for the prosecution against his wife, and a charge of forcible entry not being one of the statutory exceptions, we consider the husband is not a competent witness in this case. Apart from statute, there is of course the common law rule that wife or husband could always give evidence against the other upon a charge of personal injury. Our answers therefore are:

1. In our opinion, no.

2. Only if a charge of some kind of assault is preferred, and then he could give evidence upon that charge.

3. Yes, in a trial on indictment the prosecution is in the name of the King, and the jurors are sworn to try the issues between the King and the prisoner.

4. No.

4.—Highway—*Accommodation bridge over railway—Implied dedication to wider class of users—Maintenance.*

In the last century, a railway line was built under the provisions of a private Act in which s. 68 of the Railway Clauses Consolidation Act, 1845, was incorporated without amendment. This railway is now run by the British Railways. When the railway was constructed the company erected a bridge over the line for the accommodation of the owners and occupiers of lands adjoining the railway. It is common ground that, were there no other factors to consider, the British Railways and the owners and occupiers of the adjoining lands could agree between themselves as to the removal or otherwise of this bridge.

The bridge is approached from the north by a county road which stops where the bridge begins. The county road does not continue on the south side of the bridge. On the south side of the railway line, however, there are a number of cottages. The occupiers of these cottages have for a period much exceeding twenty years used this bridge on foot as of right and without interruption, to cross the railway from their cottages to the county highway.

The questions that arise are the following:

1. In the event of the British Railways being unable to show that there was no intention to dedicate a right of way, have the public acquired a right of way on foot over this bridge?

2. If the answer to 1 above is in the affirmative, can the British Railways be compelled, in view of the special dangers involved in crossing a railway, to keep the bridge in such repair as to make it safe for pedestrians. A.A.

Answer.

Section 68 of the Railways Clauses Consolidation Act, 1845, relates primarily to accommodation works, when land is cut in two. Possibly it is available to ensure the continued access of owners and occupiers to a highway which served their land before the railway was constructed, as we assume this highway did, inasmuch as " the adjoining lands not so taken," are not in terms limited to the lands of those owners or occupiers—though we cannot find that the courts have so decided. But twenty years use by the cottagers mentioned in the query will not give them a right under s. 68: *R.* v. *Fisher* (1862) 3 B. & S. 191; *R.* v. *Midland and South Western Junction Railway Co.* (1867) 8 B. & S. 456, the inference being that the bridge was not intended to serve any occupiers of after-erected houses: *Great Northern Railway Co.* v. *M'Alister* (1897) 1 I.R. 587. The query does not tell us whether there is a path going on southward, so that the public at large have used the bridge, as distinct from residents on the land for which it was originally provided. If yes, the facts are not unlike those in *Grand Surrey Canal Co.* v. *Hall* (1840) 9 L.J.C.P. 329 (except that in that case the bridge was used as a carriageway) and dedication as a highway can be presumed if the court so holds. If on the other hand the only persons using the bridge have been residents on the land for which the bridge was first provided, the better inference may be the other way: *R.* v. *St. Benedict Cambridge* (1821) 4 B. & Ald. 447.

We answer the specific questions as follows:

1. Arguable: see above. The burden of proof seem to be on those claiming a right of way, not on the owners of the bridge.

2. Probably not: *Brackley* v. *Midland Railway Co.* (1916) 80 J.P. 369.

5. Highways—*Electric fences—Power of county councils to prevent.*

A new feature in this county is the increasing number of electrified fences which are being erected by landowners. In particular they are often being erected when it is desired to enclose fields over which a gated road runs. Sometimes the public is warned of the presence of an electric fence by a notice affixed to either end of the fence by the owner. The current passed through the wires is not great. However, near the transformer where the current is strongest, one can receive quite an unpleasant shock, although it cannot be described as dangerous to the normal adult. Has the highway authority any powers to interfere with these electric fences? A. LOAMSHIRE.

Answer.

We do not think they can do anything as such, unless a " nuisance to the highway " can be established, which seems doubtful on the facts given. We dealt with the matter at 108 J.P.N. 434, and we notice that the Journal of the Commons, Open Spaces, and Footpaths Preservation Society deals with it again in the July issue.

6. Juvenile courts—*Constitution—Inclusion of member of panel for adjoining division.*

I shall be obliged by your opinion on whether, if only one member of the juvenile court panel is available in a county petty sessional division to attend the juvenile court, it is in order for another magistrate to sit also who is on the juvenile court panel for another petty sessional division in the same county. I can find no clear ruling on this point and think that it may occur before long in a division to which I am clerk to the justices. SNIP.

Answer.

The matter is governed by the Juvenile Courts (Constitution) Rules, 1933. Rule 3 (1) requires the appointment of a panel for each petty sessional division. Rule 13 provides that a juvenile court shall be constituted of members of " the panel " thus indicating that only members of that panel may sit. It would not be in conformity with the rules to bring in a justice who is a member of the panel for another division.

7. Land Charges Act, 1925—*Cancellation of charges—Negative certificate.*

A certificate of search has recently been issued in respect of property situate in this district revealing a restriction in selling price of the property which was built under licence in 1946. Unfortunately, it is found that two previous certificates of search issued about two years ago failed to disclose this restriction, and the solicitors for the present owner of the property now request that the charge should be removed from the register as being unenforceable. It appears that this is so, in view of s. 17 (3) of the Land Charges Act, 1925, as applied by S.R. & O. 1934, No. 285, rule 13 (2), but I shall be glad of your valued opinion concerning this. ANBUR.

Answer.

We agree. By s. 17 (3) the certificate is conclusive in favour of a purchaser or intending purchaser; we think therefore that the charge must be unenforceable, and that it is the registrar's duty to cancel it.

8. Larceny—*Coal taken from mound consisting of waste.*

A colliery has for years tipped its waste on a site and built a large mound. This mound is fenced off but the fence has fallen into disrepair. In the mound is a quantity of useable coal which is picked by locals, not employed at the colliery, without authority.

To stop this trespass it is proposed to take proceedings against the pickers for larceny of the coal.

(1) Do you agree that this coal cannot be the subject of larceny as it has by being tipped reverted to realty;

(2) Do you consider s. 11 of the Larceny Act, 1916, covers this coal, *e.g.*, does " mine " in this section include the tip which is on the surface and if it does it follows that the larceny of a shillings' worth of coal must go for trial;

(3) Had the pickers been employed at the colliery would your answer be the same? SAET.

Answer.

This is a difficult question, but we take the view that there is here an offence of simple larceny. The coal taken from the mound has been severed from the realty, and we do not think the formation of the mound constitutes a re-attachment to the realty. It is stated at 22 *Halsbury* 662, that refuse or spoil, if abandoned becomes part of the freehold, but in the present case apparently it has not been abandoned, because it was fenced round. Therefore our answers are:

1. No.

2. We do not think the section applies, but we think the charge should be one of simple larceny.

3. Yes, we do not think s. 39 of the Larceny Act, 1861 would apply.

If, however, the facts disclosed satisfy the justices that the mound was abandoned, there would in our opinion be no larceny.

9. Local Government Act, 1933, s. 164—*Disposal of land by local authorities.*

Should the consent of the Minister of Local Government and Planning be obtained by a borough council before letting land on any of the following terms:

1. On an annual tenancy—such a tenancy might continue for a considerably longer period than seven years.

2. For a term of six years and then from year to year until determined by either party on six months' notice.

3. For a period of seven years giving the lessee the option of renewing for a further seven years.

4. For a period of twenty-one years with a break clause in favour of either party after the seventh and fourteenth years of the tenancy.

Would your answer be different if—

(*a*) In the case of 3, on the renewal it was agreed that a similar option be again given to the lessee?

(*b*) In case 4 the break clause could only be exercised by either the local authority or the lessee? A.B.

Answer.

In our opinion—

1. Consent is not needed.

2. Consent is not needed.

3. Consent is needed, even if the option be exercisable against the local authority once and no more.

4. Consent is needed. Whatever be the form of break clause, the land has initially been let for a term exceeding seven years.

10. Magistrates—*Chairmanship—Ex officio justice.*

Sections 3 (5) and 33 (5) of the Local Government Act, 1933, provide that the chairman of a county council and chairman of a county district council shall, by virtue of their offices, be justices of the peace for the county, but may not act as such until they have taken the prescribed oaths. The Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950, S.I. 1950 No. 1908, provide for the election of a chairman and deputy chairman by the justices present and voting at a meeting of which at least seven days' notice has been given to each justice for the petty sessions area. In this county the chairman of the county council and the chairman of a certain county district council, neither of whose names appears on the commission of the peace, have taken the prescribed oaths and are accustomed to sit on the petty sessional bench for the area in which they reside.

1. Should notices of the meeting at which the election of the chairman and deputy chairman of the bench is to take place be sent to these gentlemen?

2. Should the secret ballot so result, are they eligible for appointment as chairman or deputy chairman of the petty sessional division? DERE.

Answer.

1. Yes. Neither the rules cited nor the relevant amended rule substituted by S.I. 1951 No. 1982, draws any distinction between commissioned and *ex officio* justices.

2. Yes, though we should not expect such an appointment to be often made, since the term of office of a chairman of magistrates runs from January 1 and an *ex officio* justice will ordinarily cease to be one (thus involving a casual vacancy in chairmanship of the bench) some four months later.

11.—Private Street Works Act, 1892—*Justices adjourn hearing with mixed suggestions and directions.*

This council are proposing to carry out works to a private street under the Private Street Works Act, 1892. The street is 700 feet long and forty feet wide. The council approved a specification providing for a twenty foot carriageway with footpaths on each side of ten feet each.

Notices of the provisional apportionment were served upon twenty-five frontagers in accordance with s. 6 of the Act. The Council themselves own about half the land fronting the street, on which council houses are built.

Three of the frontages to the street are back gardens of houses fronting to a parallel street. The council decided to charge the owners of these three houses half the normal frontage rates because of the less degree of benefit. Six objections were received. At the hearing before the justices, only three of these objectors appeared. The general grounds of objection were that the estimated expenses were excessive and that the proposed carriageway was too wide for this class of street. In support of their argument, their advocate quoted from the schedule of suggested minimum street widths for carriageways and footways of new streets issued from the Ministry of Local Government and Planning, and asked the bench to say that a thirteen-foot carriageway was sufficient.

The street is, in fact, a " minor street " leading from a " principal traffic road " and it leads into another " principal traffic road." It is in no sense a secondary means of access to the properties in the street.

The following is a verbatim record of the decision of the justices from the justices' clerk :

" The justices find that the scheme as it stands should be adjourned for amendment. The justices suggest that the road should fall under type ' G 'of maximum street widths, 1951. With regard to apportionments the justices consider them fair with the exception of X and Y, who in the justices' view should be assessed at one third rate. The justices direct that fresh notices should be given."

The council have given consideration to this finding and, to meet the justices' suggestion halfway, the council are now prepared to approve a specification providing for a carriageway of sixteen feet with two twelve-foot footpaths. It seems that the justices have not complied with the duty imposed upon them by s. 8 (1) of the Act, in that although they have not approved the scheme they have not quashed in whole or in part or even amended the resolution, plans, sections, estimate, or provisional apportionment.

It will be seen that they adjourned it for amendment by the council with a suggestion that the road should be type 'G' of maximum road widths, *i.e.*, thirteen-foot carriageway. They have also directed that fresh notices be given. If the justices had merely adjourned the hearing for the council to reconsider the width of the carriageway, the council could have gone back to them with a proposal that the specification should be amended by the justices to provide for a carriageway of sixteen feet and, if they approved, the justices could have amended the specification. As it is, there seems to be no determination upon which the council can take action by way of appeal or case stated. The finding of the justices is confusing because, without accepting the council's proposals and without making any formal amendment to them, they have in two cases altered the council's method of apportionment and have directed that fresh notices should be given, but have not specified on whom the notices are to be served or even what they are to contain.

May advice be given, please, on the following :

(*a*) If the justices' decision is in accordance with their powers under s. 8 of the Act, as they have only made a suggestion and not a formal amendment ?

(*b*) If, in view of the case of *Chester Corporation* v. *Briggs* (1924) 88 J.P. 1, the justices' reduction of two apportionments is bad in that it does not say whether the apportionments on the other frontagers ought to be increased ?

(*c*) Whether the justices' direction " that fresh notices should be given " is bad for vagueness ?

(*d*) Whether the justices having only made a suggestion had power at that stage in the proceedings to say that, with the exception of two, the apportionments were fair ? (This question is asked because it is understood from an informal inquiry made of the justices' clerk that their intention is that fresh notices should be given to all frontagers. They might find themselves in difficulties if other objectors appealed after the fresh notices have been given, as they have already expressed an opinion on the fairness of the apportionments.)

(*e*) What action should the council take to get the justices to consider the council's counter suggestion that a sixteen foot carriageway is sufficient without having to start *de novo* under s. 6 ?

(*f*) Generally on the matter. AYA.

Answer.

(*a*) No ; we doubt whether that which the justices did can be called a " decision " at all.

(*b*) Yes ; *see* also, in relation to *Chester Corporation* v. *Briggs*, *supra*, *Chatham Corporation* v. *Wright and Le Mesurier* (1930) 94 J.P. 43, and *Allen* v. *Hornchurch U.D.C.* (1938) 102 J.P. 393.

(*c*) Yes.

(*d*) We suppose that in any sort of proceedings any court may say : " So far as we have gone and upon the information before us, we see no objection to what has been done." This can be helpful guidance to the parties, but does not bind them or the court.

(*e*) and (*f*) The justices have so entangled the matter that any attempt to go on where they left off must make the tangle worse. We see no practical step except to begin again, paying such respect as is possible to the expressed opinions of the justices upon points of fact.

12.—Rating and Valuation—*Costs of collection—Solicitor's charges.*

An owner of an estate within the district died two years ago, and rate demands were ignored by the executors. The matter was placed in the hands of the legal advisers of the council, who are an outside firm of solicitors. After a lengthy correspondence, the rating officer was instructed to take proceedings, and a warrant was granted by the court with costs. The executors have now paid the rates for the two years, together with 6*s.* costs, being the court fees for the issue of two summonses and one distress warrant. Can the fees which will be charged to the council by their legal advisers be recovered from the executors as " costs " : *see* the Distress for Rates Act, 1849. DOBLE.

Answer.

We gather that the court ordered payment of the amount of the rate with costs, the costs not being more precisely specified. The expense of obtaining legal advice, and having the correspondence conducted by a firm of solicitors, cannot be recovered from the executors.

13.—Road Traffic Acts—*Application to restore driving licence—Quarter sessions—Costs awarded—Recovery.*

At a recent quarter sessions for this county a person applied under s. 7 of the above Act to the court for the removal of a disqualification for holding or obtaining a motor driver's licence imposed upon him at a previous quarter sessions. The court allowed the application and ordered the applicant to pay the costs of the chief constable, who appeared by counsel.

There appears to be no authority for the clerk of the peace to tax costs of this nature, and the court therefore made an order for the payment of a specific sum. Several applications have been made to the applicant for the payment of this sum, the letters have not been acknowledged and it appears that the applicant does not intend to pay.

It is now desired to take proceedings for the recovery of the costs, but there is some doubt as to the correct procedure to be adopted. An application to the court under s. 7 of the Road Traffic Act, 1930, is not an appeal and the provisions for the recovery of costs contained in the Summary Jurisdiction (Appeals) Act, 1933, apparently do not apply.

I should welcome your valued opinion as to whether proceedings for the recovery of such costs can be taken in the manner provided by the Summary Jurisdiction Acts with regard to a civil debt, and if you consider that this does not apply, what procedure could properly be adopted. STAG.

Answer.

As such costs are not stated in the Act to be recoverable summarily, we do not think such a remedy is available. If, as we think, there is no other method of recovery, the correct course would appear to be for the chief constable to bring an action in the county court. Reference may be made to 19 *Halsbury*, pp. 270-271.

14.—Road Traffic Acts—*Costs incurred by police in operating a speed trap—Order, on conviction, that defendant pay part of such costs.*

X was charged with exceeding the speed limit and was one of thirty defendants charged with the same offence at the same hearing.

the offences having been committed over a period of some days. The defendant pleaded guilty, and the solicitor for the prosecution explained to the bench that the prosecution arose from the operation of three "walkie talkie" sets by the police, points A and B being concealed observation posts, and point C being the police car which in fact stopped the defendant. After the plea of guilty was advanced the advocate for the prosecution asked for witness' expenses amounting to 6s. 6d., which he said referred to an unseen witness, *i.e.*, the W/T apparatus, and the 6s. 6d. represented a proportion of the amount of the expense of hiring this apparatus, and the bench allowed this expense in addition to an advocate's fee.

Kindly advise whether you consider (1) the charge for hire of apparatus for use in catching an offender can legitimately be charged against him, and if the answer to (1) is in the affirmative, would it not be equally legitimate to charge a proportion of the cost of petrol used in the police motor cars, wear and tear of tyres and depreciation and possibly the wages of the constables employed? JUVENEX.

Answer.

In our view these costs were properly awarded under s. 18 of the Summary Jurisdiction Act, 1848.

As to the corollary suggested by our correspondent, we think that the answer is that general police expenses which would have been incurred in any event ought not to be awarded as costs against a particular defendant. It should be shown that unusual expenses were specially incurred in connexion with the detection and/or prosecution of his offence, and the case to which our correspondent refers appears to satisfy this requirement.

15. Road Traffic Acts—*Road and Rail Traffic Act*, 1933, s. 9—*Vehicle used more than twenty-five miles from its operating centre*—*Venue for offence.*

I should be obliged for your opinion on the following points.

The holder of an "A" carrier's licence issued under the Road and Rail Traffic Act, 1933, has been prosecuted for failing to comply with a condition of his licence contrary to s. 9 of the said Act.

The condition contravened is the one included by virtue of the Transport Act, 1947, s. 52, *viz.*, that goods shall not be carried for hire or reward, if the vehicle at any time while the goods are being so carried is more than twenty-five miles from its operating centre.

The point has been taken by the defence that no offence has been committed until the vehicle is twenty-five miles from its operating centre, therefore this court has no jurisdiction because the venue should be at any court along the route taken by the vehicle from the twenty-five miles limit to its destination.

For the prosecution it is claimed that the whole journey is illegal, therefore an offence has been committed within the jurisdiction of this court.

I think that it could also be argued that the offence has been committed within the jurisdiction of this court, since the offence is for failing to comply with a condition of the licence and not for using a vehicle outside the twenty-five miles limit and it would be at the operating centre, which is within the jurisdiction of this court, that the holder of the licence would give certain instructions that caused the journey to be made. JOW.

Answer.

We agree with the prosecution's contention. In the wording of s. 52 of the 1947 Act we think that the whole of a journey during which goods are carried for hire or reward is illegal if the vehicle is at any time during the journey more than twenty-five miles from its operating centre while goods are being so carried.

16. Road Traffic Act, 1930, s. 21.

We refer to P.P. 8, and your answer thereto in the March 31, 1951, issue of your Journal.

We have a case on all fours with that cited in P.P. 8, which is returnable at our local court in the immediate future. It occurs to us that there may have been developments arising out of your answer to P.P. 8 and, if you can refer us to any further reported cases other than *Milner* v. *Allen* (1933), and *Venn* v. *Morgan* (1949), we shall be most grateful. JAN.

Answer.

So far as we know there is no reported case in which a mistake in the time alleged has been specifically dealt with. Nothing has been reported since March 31 last which could lead to a modification of the answer given to P.P. 8 in our issue for March 31. Our correspondent might like to note the case of *Russell* v. *Read* (1949) 113 J.P.N. 111, in which the judgment in *Milner* v. *Allen* was approved, but the time of the offence was not there in question.

17. Road Traffic Acts—*Special reasons*—*Road Traffic Act*, 1930, s. 15—*Meaning of "in charge"*—*Owner finds rotor arm has been removed and sits in car wondering what to do.*

I am appearing in a local court to defend a motorist charged under s. 15 of the Road Traffic Act, 1930. My client had left his car in a car park of a public house. On going out to it at closing time he found the bonnet unhooked and the rotor arm stolen. As it was raining heavily he sat in the driving seat wondering what to do.

As the car could not be started and my client had made no attempt to drive it away I hope to be able to persuade the bench either that he was not "in charge" of the car or, alternatively, that a "special reason" exists, for not imposing a disqualification.

I have considered *Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730 and *Hopper* v. *Stansfield* (1950) 114 J.P. 368, but in neither if these cases were the facts identical with the present one. I have also noted the article at 109 J.P.N. 117, on the meaning of the words "in charge." Can you refer me to any other recently decided cases which would assist me? JULL.

Answer.

We cannot refer to any recent case in point. It would appear from the short facts given that the owner went to his car with the intention of driving it, and that he would have done so had the car been in a drivable condition. The removal of the rotor arm was a fortuitous circumstance for which he can claim no credit, and it does not appear to us to give grounds for arguing either that he was not in charge of the car or that there are special reasons for ordering that there shall be no disqualification.

18. Water Supply—*Communication service or supply pipes.*

My council as water undertakers are concerned with a water pipe between certain premises and the main. Owing to the defect much water is being wasted. Schedule 3 to the Water Act, 1945, is not in operation in the borough and I am accordingly thrown back on a provision in a local Act which after diligent search appears to be the only one available to me.

The section is as follows: "If it should appear to the corporation that by reason of any injury to or defect in any communication pipe which the corporation are not under obligation to maintain there is any waste or risk of waste of water or injury or risk of injury to person or property it shall be lawful for the corporation to execute such repairs as they may think necessary or expedient in the circumstances of the case without being reqested so to do and if any injury to or defect in the communication pipe shall have been ascertained the expense incurred by the corporation for the purpose of ascertaining the injury or defect and executing the repairs (including the expenses of breaking up filling in reinstating and making good any road pavement or soil for those purposes) shall be recoverable by the corporation from the owner of the premises supplied or in cases where the communication pipe is repairable by the occupier of such premises from the occupier. Provided that except in case of emergency the corporation shall not under the powers of this section enter into any house or private premises unless they shall have given to the occupier of such house or premises and (in any case where the communication pipe is repairable by the owner of the said house or premises) to such owner not less than twenty-four hours' previous notice of their intention so to enter."

Had sch. 3 applied I should not have been in difficulty nor would I have had to refer to the section of the pipe concerned or to communication pipes.

I duly served a notice on the owner and occupier of the premises in question that the necessary repairs would be effected by my council. The latter part of the section states that the cost of repairs shall be recoverable from the owner or from the occupier when the occupier is liable for the repair of the communication pipe.

It appears, therefore, that in any case the question as to who is liable for the repair will have to be gone into.

A further question is, what is the meaning of "communication pipe."

It appears by inference from the following clause of the local Act that communication pipe means any pipe leading from the water-main. A similar inference could be drawn from the provisions of the Waterworks Clauses Act, 1847. I would appreciate your advice on the following points:

1. Whether communication pipe has the meaning suggested.
2. What course you would advise in ascertaining and/or proceeding against the person liable to pay for the cost of repairs. ACS.

Answer.

1. We think so; it is reasonable to suppose that the usage, agreeing with that under the Waterworks Clauses Acts, was intended by Parliament in the local Act.

2. It would, we should say, be exceptional for an occupier to be liable, and the structure of the section suggests that Parliament regarded the owner as *prima facie* liable. We should proceed against him, and leave him to set up the defence of a repairing lease or other basis for liability of the occupier.

Printed by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex, England. Registered at the G.P.O. as a newspaper. Saturday, December 29, 1951. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports; £3 10s. per annum without Reports.